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THE ROLE OF PEOPLE'S COUNSELS IN IMPROVING PUBLIC PARTICIPATION IN ELECTRIC UTILITY POLICY MAKING

JULY 30, 1976

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ABSTRACT

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Voluntary civic leaders express dissatisfaction that the People's Counsels have not been able to respond fully to citizen concerns over non-traditional issues such as rate restructuring and conservation policy. Political and budgetary problems as well as vagueness in statutory language creating the offices have diminished the accountability of these officials to their consumer clients. Voluntary organizations prefer direct participation to representation; models exist in which People's Counsels could assist more direct public participation by helping citizens present their own case rather than presenting it for them.

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TABLE OF CONTENTS

1. Introduction and Summary 1

Summary of findings 2

2. Emergence of People's Counsels 4

Historical Sketch of Utility Regulation 4
Public Controversy Over Utility Rates 9
Creation of Offices of People's Counsel 11

3. Profiles of Offices of the People's Counsel 18

Description of Offices 18
State-by-state profiles 28

4. Citizen Commentary and Interpretation 51

a. Technical Information Barriers to Public Participation . . 51

Access to Technical Information 57
Access to Expert Assistance 60
People's Counsels and Technical Assistance 65

b. Defining the Public Interest 68

Non-traditional concerns of citizen groups 68
What is the Public Interest? 70
Who defines the Public Interest? 73

c. Accountability 80

Statutory definitions 80
Procedures for solicitation of citizen input 83
Citizen input into selections of People's Counsel 87
Informal relationships 92
Citizen participation versus citizen representation . . . 94

5. Findings and Recommendations 102

Findings 109
Recommendations 113

6. Appendices 120

Residential Utility Consumer Action Groups 120
Interstate Commerce Commission Public Counsel 122
Bibliography 128
Procedure 130
Interview questions: People's Counsel 133
Interview questions: Citizens groups 135

1. INTRODUCTION AND SUMMARY

Factors that mold electric utility technology reach into virtually every sector of society: commerce and industry, legal, engineering and scientific professions, finance, academia, federal and state regulatory agencies. Abroad network of institutions cooperate closely to provide the reliable electrical service that modern Americans have learned to expect.

One element of the network, the consuming public, has until recently played only a passive role. Although consumers as a class define energy demand, their traditional role in directly influencing electric rate policies has been minimal at best. Utility regulatory agencies such as state public service commissions do not vigorously advocate the consumer point of view, nor do they see it as their mission. Their role has become more that of an objective quasi-judicial body, established to protect the utility as much as to protect the consumer.

Eleven states have now established government offices to represent the comsumer point of view in rate hearings. Each office has a different label, People's Counsel, Consumer Counsel, Public Advocate, Public Counsel, (here we will refer to them generically as People's Counsels,) but all share a common purpose of advocating the citizen's position in rate hearings.

This activity naturally raises the question of "What is an effective public participation program?" What are the barriers to citizen involvement in agency policy making, and what models can be created or duplicated to improve the involvement of the unrepresented public?

This report attempts to help answer these questions by analyzing citizen participation in utility rate making at the state level and the role of state People's Counsels in providing citizen participation.

Summary of Findings

In brief summary, our main conclusions regarding how effective these People's Counsels have been in improving public participation can be categorized as follows (numbers in parentheses refer to findings in section 5):

1. The intrinsic complexity of utility regulation strongly inhibits active participation by citizens. Citizens lack access to technical information and to expert assistance. As a consequence, many community organizations choose not to intervene in rate hearings. (1,2,3,4)

2. People's Counsels are an effective mechanism, in the view of citizens, to achieve a major consumer goal: keeping electric rates lower. In so doing they contribute importantly, albeit indirectly, to public participation; they relieve citizen groups of the burden of presenting complicated legal technical analyses of utility rate increase requests. (5,11)

3. While People's Counsels offices have developed few formal mechanisms for providing technical assistance or information to citizen groups, many serve informally as important "insiders" within government that citizens tap to help them more effectively to achieve their goals. (6,7)

4. Many citizen concerns are not traditionally addressed in rate hearings. Citizens raise non-traditional issues in rate hearings; the

non-traditional nature of the issues provides an intrinsic barrier to participation in procedures that have become well-established and routine. (8)

5. While citizens rarely all agree on any utility issue, their range of opinion is neither the extreme of a simple-minded mass mentality nor a hopeless tangle of competing and opposing interest. People's Counsels tend to lump consumers into one undifferentiated mass; this leads to conflicts between citizens and the Counsels. (9,10,12)

6. As a means to increase direct citizen input into utility policy, People's Counsels remain an unfulfilled promise. Statutes creating the offices provide more the image than the reality of citizen representation and participation. The People's Counsels have no established formal procedures for soliciting citizen views on priorities nor for selecting the People's Counsel. People's Counsels thus rely on their own personal and political judgments more than on formal accountability to the public. (13, 14, 15, 16)

7. Informal relationships between People's Counsels and citizen groups have been the most effective means citizens have had for providing input into rate decisions. When the prospective People's Counsel is known to citizen groups, they offer their cooperation; when the People's Counsel is not known, the official becomes an outsider without trust and with little accountability. (17, 18)

8. Citizen activists prefer direct participation to representation; People's Counsels could instigate more effective direct public participation by helping citizens present their own case rather than by presenting it for them. (19)

2. EMERGENCE OF PEOPLE'S COUNSELS

Historical Sketch of Utility Regulation

Once Thomas Edison had invented and perfected an incandescent lighting system in San Francisco in 1879, the central generation of electricity was for all intents and purposes born. Three years later, New York State built the first commercial generating plant for an "Edison type lamp" and soon electric stations were being constructed across the country.[1]

Their numbers rose from fifty plants in 1885 to 6,542 in 1917. Many officials were anxious to promote the building of these plants, because they believed the generating station would encourage growth of business and industry as well as raise property values. At that time, municipal government, through franchise agreements, had sole control over the small but numerous electric utility companies.

Franchise contracts between the utility company and the local government set standards for services to be rendered, rates to be changed, methods of arriving at rates, accounting methods to be used, amount to publicity to be expected concerning the utility company accounts and, in the case of term franchises, methods of renewing the franchise or a provision for the taking over by the municipality of the company at the expiration of a franchise.[2]

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[1] J. V. Garland and Charles F. Phillips, The Crisis in the Electric Utilities, (New York: The H. W. Wilson Co., 1936) p.3.

[2] Ibid., p. 57.

Placing the responsibility for utility regulation with municipal governments revealed two basic and obvious flaws. One, no provisions were made in the agreements which could meet and evaluate service or alter utility rates. Secondly, public officials had no way of officially checking if the utilities were fulfilling their side of the contract.[1] Consequesntly, utility companies had a free hand to produce their services at the quality they tnemselves deemed adequate and for tne price they felt to be equitable.

At this early stage of electric power, many thought that competition between the many local power stations was in the best interests of the consumer. Consumers could choose which electric company they wanted to serve their homes, and in the spirit of the "invisable hand", the natural result would be low prices and good service. After the turn of the century however, this competitive spirit ideology appeared illusory.

It was needlessly expensive and wasteful for both the consumer and the utilities to have a number of generating plants producing electricity at half capacity, when a single larger plant could produce a greater amount of electricity for a larger area cheaper and more efficiently. It also became more apparent that local regulation was not working and that the franchise was a meaningless method of control. Too many local politicians drew up the franchises with the self-serving expert guidance of utility company executives while other public officials accepted money to obtain franchise agreements for companies.[2]

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[1] Ibid., p.58

[2] Ibid., p.60

It was considered an improvement when central power stations began to broaden their service base and state government gradually took over regulation of utilities. The duties of utility regulation were simply passed on to an already existing regulation commission, the Board of Railroad Commissioners. The Boards were the only regulating bodies in most states at the time and it seemed logical that the responsibility should lie with them. The Boards were originally authorized to "research and gather information, make reports to the public, offer recommendations to the railroads, and report to the legislature their suggestions for needed legislation."[1] From 1870 to 1907, the railroad commissions gained more authority than simply this advisory function. The Boards now had the power to set electric rates, pass judgments on the quality of service and, most importantly, enforce their own rulings.[2]

By 1907, public officials began to realize the need for an ever stronger single administrative body to regulate all utilities. New York and Wisconsin's state legislatures were the first two states to arrange for meaningful utilities commissions. The commissions would regulate gas, water, telephone and telegraph companies and were given broad investigative and judicial rights to work for and protect the public interest.

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[1] Herman H. Trachsel, Public Utility Regulation, (Chicago: Richard D. Irwin, Inc., 1947) p.110.

[2] Ibid., p. 110

Other states saw the importance of Public Utilities Commissions and rapidly created their own. In the eleven states where we study offices of People's Counsel, Public Service Commissions were created mostly in the years 1910 to 1913; Florida waited until 1963 to create its PSC. Most states followed the example set by New York and Wisconsin. The basic purpose and duties of the commissions were very similar, "they have the authority to pass upon the issuance of stocks, bonds and other securities; to examine properties, books, and accounts; to require detailed reports in prescribed form; to prescribe uniform systems of accounts; to fix rates; and to require adequate and impartial service."[1]

Over the last sixty years each state has designed its own Public Service Commission according to the state's particular constitution and laws; there is no uniform Public Service Commission legislation. Presently, the number of Commissioners in each state ranges from three in Florida, Indiana, Maryland, Montana, New Jersey, Rhode Island, and Washington, D.C. to five or six Commissioners in Georgia (5), Missouri (5), and New York (6). Commissioners either are appointed by the governor or elected by the state at large. Connecticut, Florida, Georgia and Montana Public Service Commissioners are elected while Indiana, Maryland, Missouri, New Jersey, New york, Rhode Island and Washington, D.C. are appointed.[2]

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[1] Ibid., p. 111

[2] National Association of Regulatory Utility Commissioners, 1973 Annual Report on Utility and Carrier Regulation, (Washington, D.C.: National Association of Regulatory Utility Commissions) 1975.

One important function of the Commissions is to grant or deny rate increases requested by utility companies. As early as 1930, there was concern that the Commissions were overly stressing this judicial role and neglecting what many perceived to be their primary job, that of representing the consumer. In that year, a New York Committee on Revision reported, "We think it fair to say that the commission, by overestimating the judicial side has neglected what was originally conceived to be its primary function to advance the interests of the public in relation to the service of utility companies."[1] Herman Trachsel, in in his book Public Utility Regulation, describes such a commission: "The procedure of a commission which assumes the attitude of a judicial body resembles very much that of a regular court. It merely waits for complaints to be brought to it before taking action. It assumes that the cities and consumers wish to present their own cases, hire their own investigators and lawyers and bear all the expense."[2]

The turmoil and public controversy associated with the recent "energy crisis" indicated that Public Service Commissions by themselves were not able to adequately protect the consumer in utility rate policy proceedings. It was this turmoil that led most directly to the establishment of People's Counsels.

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[1] Garland and Phillips, The Crisis In the Electric Utilities, p. 76.

[2] Trachsel, Public Utility Regulation, p. 127

Public controversy over Utility Rates

> "Pacific Gas and Electric Co., the huge corporation that lights and heats Northern California was confronted by hundreds of angry, loud and law-abiding protesters yesterday..."
>
> San Francisco Chronicle, April, 1974.
>
> "Private citizens from all walks of life turned out Wednesday before the state Public Service Commission to oppose Arkansas Louisiana Gas Company's request for a rate increase... A spokesman for ACORN, an organization for lower income persons, said that the new rates had increased some residential bills by 30% to 64% a month."
>
> Arkansas Gazette, January, 1974.

The years between the end of World War II and the mid-1960's saw little change in the price of electricity. From 1950 to 1973, Americans consumed more and more energy each year with an annual growth rate of 3.5%. As industrial production expanded and the public's dependency on energy increased, utility companies simply refined their technologies and increased the number of power plants to accomodate the growing need.[1]

The industry experienced relatively constant fuel costs and electricity rates were kept low. Use of electricity was usually charged according to "declining block rates", -- the more the customer uses, the lower the unit price. This rate structure encouraged the use of electricity and, because of the industries' economies of scale, provided more income to the utility to build large plants and further reduced costs and rates.

After the mid-1960's, however, increased construction and fuel costs caused these economies of scale to reverse themselves. Electricity now costs more to generate per kilowatt hour instead of less. The price of goods and services began to rise and for the first time in many years consumers began to spend more on utility bills. Middle-income consumers were not particularly concerned about their utility bills, because they were still able to pay somewhat comfortably. This would change in the early 1970's, however, as the economy wound down and the amount of cash flow decreased.

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[1] Energy Policy Project of the Ford Foundation, A Time To Choose, (Massachusetts: Ballinger Publishing Co., 1974), p. 256.

By 1970, domestic production of oil was leveling-off, and the annual growth in consumption of electricity had risen to 4.5%. Americans were importing thrity five percent of their oil when OPEC (Organization of Petroleum Exporting Countries) oil embargo hit in November, 1973. The decreased supply led to greatly increased prices and the power companies needed more and more rate increases. Because of inflation and the oil embargo, consumers would have to pay more for electricity.

Citizens began to become knowledgeable about energy issues , which were causing a bigger drain on their pocketbooks. Leaders of national citizen action organizations estimate that before the embargo, there were only a handful of citizen groups concerned with utility prices.[1] Presently, there are over one thousand such citizen action groups: Massachusetts Fair Share, Arkansas Community Organizations for Reform Now, Connecticut Citizen Action Group, Carolina Action, Georgia Power Project, Electricity and Gas For People, are a few of the more well known groups.

As citizens became more active in local, community, and federal affairs, many citizens and officials began to see the need to reevaluate and revamp the way in which citizens participate in utility regulation. Public Service Commissions have established consumer affairs or consumer information offices which handle citizen complaints and requests.

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[1] Environmental Action Foundation, Movement for Economic Justice and Center for Science in the Public Interest, Interview with members of these organizations in Washington, D.C., March, 1976.

The concept of People's Counsel was created as an innovative technique to make the utility regulatory process more responsive to the needs of the underrepresented residential consumer.

Creation of Offices of People's Counsel.

To provide advocacy for the consumer, a special People's Counsel office has been established in a number of states to represent and appear before the Public Service Commission in the name of the state and its citizens. The first such office was established in the state of Maryland in 1924. The People's Counselor as he was called, was appointed by the governor and held the same status within the Public Service Commission as the commissioners. He was authorized to use the services of commission experts "as well as the records and other facilities of the commission," [1] in order to perform his job. The Counselor would officially represent the public interest or act in defense of the public interest in any case where a citizen, firm or corporation would file a complaint with the PSC. As stated in the 1924 law, the People's Counselor would "participate in the preparation or re-forming fo the pleadings before the commission if need be, or investigation or further the facts or evidence upon which the application, complaint or protest is based." [2]

Two years later, the 69th Congress of the United States passed a bill createing a second People's Counsel office in Washington, D.C. The President of the United States appointed the People's Counselor (this has since changed to the mayor of Washington, D.C.) and his or her duties and qualifications were more specific than in Maryland. The People's Counsel:

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[1] Maryland Laws, Chapter 534, Section 418, April 1924.

[2] Ibid., Section 418.

1. Shall represent and appear for the people of the District of Columbia at all hearings of the commission and in all judicial proceedings involving the interests of users of the products of or service furnished by public utilities under the jurisdiction of the commission;

2. Shall represent and appear for petitioners appearing before the commission for the purpose of complaining in matters of rates or service; and

3. May investigate the service given by, the rates charged by, and the valuation of the properties of, the public utilities under the jurisdiction of the commission.[1]

Indiana became the third state to create such an office in 1941. The responsibilities of this Public Counselor were very similar to Maryland and D.C.'s. The Public Counselor was to be appointed by the Governor and would represent the members of the public before the Public Service Commission. However, Indiana's bill was slightly different in that the Public Counselor was authorized to participate in appeals courts as well as in Commission proceedings. The sponsors of the Indiana legislation also tried to ensure that the office would be independent of the Public Service Commission.

The remaining consumer advocates offices were not created until the late 1960's and early 1970's, when consumers became intensely interested in utility regulation. The purpose of the consumer advocate offices is the same, to represent the public before the state Public Service Commission.

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[1] The history of D.C.'s People's Counsel offers an informative anecdote about the problems of citizen interaction with appointed officials who represent the public. The first People's Counsel, William McK Clayton, was appointed to the position by President Coolidge. There was some speculation after Mr. Coolidge's announcement whether or not Mr. Clayton would be acceptable to citizens groups. He was a lawyer and chairman of the Public Utility Committee of the Washington-based Federation of Civil Associations (The Washington Daily News, 20 December 1926, p. 10). One faction of the D.C. Federation had strong reservations about Mr. Clayton's trustworthiness and tried to prevent his appointment. Their concerns were overrided, however, and he was finally approved as the new People's Counsel. Residents in the District continue to be interested and involved in the selection of People's Counsel as we will discuss later.

Congress has also considered legislation to create a federal People's Counsel office. In 1966, the Senate Subcommittee on Intergovernmental Relations sent a questionnaire to 57 Public Service Commissions. The questionnaire asked about commission staffs, budgets, organization and so forth. Results revealed that the Public Service Commissions had massive amounts of work and very few technical experts or funds with which to accomplish it.

Action was needed to upgrade and "modernize the regulation of the major electric, gas, telephone and telegraph utilities," as Senator Metcalf said in his opening statement for Senate bill 2933.[1] Moreover, state regulatory commissions had serious organizational and financial problems and the consumers' voice was not being adequately represented in the regulatory process. How could the various PSC's possibly handle their normal work load and prepare cases on behalf of the consumer? On Feb. 6, 1968, Senator Metcalf and four other Senators introduced S. 2933, the Intergovernmental Utility Consumers Act as a possible solution.

The bill, (which was not acted upon) and its successor in the following Congress, S.607, would establish an independent agency known as the United States Office of Utility Consumers Counsel whose role would be to represent the American consumer before federal and state regulatory agencies. To insure that citizens were represented on all levels of the utility regulation process, the bill provided grants to state and local governments so that they may arrange for their own Utility Consumer's

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[1] U.S., Congress, Senate, Senator Muskie summarizing hearings and legislative background for S. 607: Utility Consumers Counsel Act of 1969., 26 February 1970. Congressional Record, S-24449-60.

Counsels. The bill also called for "improved methods for obtaining and disseminating information with respect to the operations of utility companies of interest to the federal government and other consumers." Finally, the bill was to provide federal funds "to universities and other non-profit organizations for the study and collection of information relating to utility consumer matters."[1]

Twenty seven days of hearings were held on S. 607. In the words of Senator Metcalf it seemed that "the private utility lobby, the IOU's (Investor Owned Utilities) and the state regulatory commissioners saw no merit in adding 'the voice of the consumer' to the regulatory process."[2]

Most of those who testified against the bill felt that there was simply no need for an additional office to take over the PSC's responsibility of protecting utility consumers.

> "The Consumers Counsel could not do more for consumers than most of the commissions do now for them and therefore such counsel would impose a duplicate and unnecessary cost upon taxpayers."[3]

Opponents of the bill referred to Franklin D. Roosevelt's veto statement of a bill which would have created a People's Counsel office for

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[1] U.S., Congress, Senate, To Establish An Office of Utility Consumers' Counsel. Hearings before a subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, S. 607, 91st Cong., 1st sess., 1969.

[2] U.S., Congress, Senate, To Establish An Office of Utility Consumers Counsel. Hearings before a subcommittee on Intergovernmental Relations of the Senate Committee on Governmental Operations, S. 607, 92nd Cong., 1st sess., p. 1. (1971).

[3] U.S., Congress, Senate, To Establish An Office of Utility Consumers Counsel. Hearings before a subcommittee on Intergovernmental Relations of the Senate Committee on Governmental Operations, S. 607. (Remarks of Mr. Geoge Bloom) 91st Cong. 1st sess., pt. 2 p. 220. (1969)

New York State. Mr. Roosevelt who was Governor at the time, believed that the Public Service Commissions' duties were specifically legislated by their respective states and those responsibilities should remain with the state regulatory bodies. If those PSC duties were usurped by the People's Counsels then the Public Service Commissions would be reduced "merely to a court." Governor Roosevelt felt that the very idea of a "People's Counsel as intended by this bill is antagonistic" and the power to regulate and protect the public interest lay with the commissions.[1]

According to those in favor of S. 607, Mr. Roosevelt's hopes for an unbiased and effective regulatory state agency never became reality. In their opinion the Public Service Commissions have taken on the role of a judicial court and it has become increasingly difficult for commissioners to act both as judge and advocate for consumers.

> "The experience of the utility commissions seems to indicate... that independence for them has characteristically meant a cultivation of a judicial attitude that left little room for vigorous protection of the consumer, who without such protection, cannot readily put his resource against those of a utility company."[2]

Public Service Commissioners and community organizers alike also pointed out that it was very difficult for the commissions to present the citizen side of a case when the state agencies were so poorly financed and staffed. It is "impossible to carry out the necessary research to rebut the expert justification presented by the high powered staff of a utility."[1]

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[1] Veto Message of Gov. Franklin D. Roosevelt of New York on Legislature Bill No. 1429., April 1930. Hearings before the Subcommittee on Intergovernmental Relations on S. 607., 91st Cong. 1st sess., pt. 2, p. 221.

[2] James W. Fester to Senator Lee Metcalf, 29 February 1969, letter, U.S., Congress, Senate, To Establish An Office of Utility Consumers Counsel. Hearings before a subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, S. 607, 91st Cong., 1st sess., pt. 2, p. 233.

The proponents of S. 607 saw the bill as a way for the federal government to provide citizens with the capability to make themselves heard in the regulatory decision making process. The utility consumer office would provide a focus for citizen complaints and would be adequately supplied with technical assistance and grant money to act as an effective advocate on behalf of citizen interests. S. 607 would also assure the public that utility company records would be published in a digestible, understandable form and within easy access for all. As yet, no federal People's Counsel has passed.

A similar suggestion to improve citizen representation on the federal level is the Agency for Consumer Protection (ACP -- S. 200,H. 7575). The Agency for Consumer Protection would be an independent, non-regulating agency established to represent consumer interests before federal agencies and courts along with researching and disseminating information to the public. This bill has been worked and reworked in different forms since 1961 when Senator Estes Kefauver first introduced a bill to create the Department of Consumers.[2]

Opponents argue that the federal bureaucracy is already too large. To add another agency would just increase the number of cumbersome, expensive departments. The business community is concerned about the agency's right to see and publish information from company agency files.

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[1] U.S., Congress, Senate, To Establish An Office of Utility Consumers Counsel. Hearings before a subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, S. 607. (Remarks of Dewey M. Ducket) 92nd Cong., 1st sess., p. 74, 28 October 1971.

[2] Report of the Senate Committee on Government Operations on the Consumer Protection Agency Act S. 707, 93rd Cong., 2nd Sess., p. 2. (1974).

Those in favor of the Agency for Consumer Protection feel that the ACP would provide a focus for citizen views which in the past have not had the chance to be effectively expressed.

"Consumers, isolated and fragmented, lack the resources and expertise to participate adequately in adversary proceedings."[1]

On April 17, 1975 the President directed, "department and agency heads, in coordination with the Domestic Council to review Executive branch procedures to make certain that consumer interests receive full consideration in all government action." The President requested that Congress "postpone further action" on the ACP as a result of his latest step to improve the government's response to consumers. President Ford explicitly described his position on the Agency for Consumer Protection, "It is my conviction that the best way to protect the consumer is to improve the existing institutions of government, not to add more government." Each department and agency would research and develop a consumer representation plan attuned to the particular agency's "own circumstances but in each instance providing detailed arrangements whereby consumers can be effectively represented in all major consumer related policies and actions."[2]

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[1] U.S., Congress, Senate, Senator Ribicoff speaking for the Consumer Protection Act of 1975, S. 200, 94th Cong., 1st Sess., 17 January 1975, Congressional Record, Vol. 121.

[2] President Gerald R. Ford to The Honorable Abraham Ribicoff, The Honorable Jack Brooks and The Honorable Harley O. Staggers, letter, 17 April 1975.

3. PROFILES OF OFFICES OF THE PEOPLE'S COUNSEL

Description of Offices

This report examines People's Counsels offices in ten states and the District of Columbia which have statutory mandates to represent the "public interest" before state regulatory agencies. These states are: Connecticut, Florida, Georgia, Indiana, Maryland, Montana, New Jersey, New York and Rhode Island.

These eleven offices were selected for our study because, when this project was designed in July 1975, they were the major state offices intervening in rate hearings on behalf of the consumer. Other states such as Vermont have more ad hoc consumer advocacy programs, but no formal apparatus similar to that established in these eleven. Since July 1975, New Hampshire, Colorado, Texas, Wisconsin and other states have considered establishing People's Counsels or have already done so.

This section reviews and compares the basic factual information pertaining to the People's Counsel offices: (1) Establishment of the office and selection of the People's Counsel; (2) budget and other resources available to the office, including the number of personnel and in-house experts, and (3) statutory powers and duties of the People's Counsel. Descriptive profiles of each office may be found at the end of this chapter.

(1) Establishment of the Office and Selection of the People's Counsel

People's Counsel offices were established, in part, as a response by state legislators to the energy crisis and citizen disenchantment with the rising cost of electricity. Nine such offices have been established since 1970. Two of these, Maryland and Washington, D.C., actually passed People's Counsel legislation as early as 1924 and 1926. The District of Columbia office was terminated as a result of a Reorganization Act in 1952, and not until the last few years has citizen interest increased enough to motivate re-establishing the office. Indiana and Rhode Island created offices of a People's Counsel in 1941 and 1966 respectively, prior to the energy crisis. Indiana's statute has not been substantially altered since it becase law thirty-five years ago.

The selection process and the criteria by which a People's Counselor is chosen are important factors to note. All of the present Counsels have been involved either as elected or appointed officials in state and local government. For example, two Public Counselors, Frank Biddinger from Indiana and Florida's Woodie Liles were elected members of their respective state legislatures. John Keane in Maryland, Rosemany Pooler in New York and William Gural in New Jersey were elected to various local posts as well as being appointed to state government positions.

Two men worked in the Attorney General's office in their states; Wheeler Bryan was Assistant Attorney General in Georgia and William Gural was Deputy Attorney General in New Jersey.

Four People's Counsels have professional backgrounds that reflect an interest in representing "under-represented" citizens: William Barvick in Missouri, John Keans in Maryland, Rosemary Pooler in New York and David Silverstone in Connecticut. William Barvick and David

Silverstone both worked with legal services programs in their States; the former was the Regional Director of the Office of Economic Opportunity legal services program for five years. The latter first entered legal service work as a staff attorney, and eventually become the Senior Attorney for Fairfield County Legal Services, Inc., in Danbury, Connecticut.

Rosemary Pooler worked closely with citizen groups before accepting the job as Director of the Consumer Protection Board. From 1971 to 1973 she was Director of the Consumer Protection unit in Syracuse, New York, investigating such issues as prescription drug pricing and television repair practices. In 1973 she was elected to the Syracuse City Council and also became the Regional Coordinator of the New York Public Interest Research Group. John Keane was acting Assistant Public Defender for one year before being appointed the new People's Counselor in Maryland.

As they are now written, statutory qualifications for People's Counsels are quite general. Most statutes require the People's Counselor to be a lawyer authorized to practice in the state. Only Montana explicitly mentions specific training and experience necessary for the job. Its Consumer Counsel must have a bachelor's degree "with a major or minor in accounting or allied fields."[1] Connecticut's statute is less directed towards professional requirements than towards a prospective Consumer Counsel's "strong commitment and involvement in effort to safeguard the rights of the public."[2]

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[1] Montana Revised Codes Annotated 70-701(1947)
[2] 19 Connecticut General Statute Annotated, 170-b

The remaining states provide less direction for People's Counsels' qualifications.

In four of the eleven states, legislators have included explicit provisions which require that the People's Counselor must not be employed by or "have any pecuniary interest therein" with any public utility. In the District of Columbia and Maryland, this provision applies to the People's Counselor while holding office only. In Georgia, the provision applies to the Public Counsel while in office and for five years thereafter. Florida's Public Counsel must avoid any partisan political activities as well. The Statute reads: "No officer or full-time employee of the Public Counsel shall engage in any other business or profession; serve as the representative of any other political party or on any executive committee or other governing body thereof . . ."[1]

Presently five People's Counsels are chosen either by the Mayor in Washington, D.C. or by the Governor as in Connecticut, Indiana, Maryland and New York. The Attorney General selects the Counsel in Georgia, while in Missouri and New Jersey, the Director of the State Agency makes the decision. Florida and Montana People's Counsels are chosen by Joint Legislative Committees and Rhode Island's Executive Director is hired by that state's seven member Consumer Council.[2]

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[1] 13B Florida Statutes Annotated § 1, chapter 350, section 1

[2] The Rhode Island Consumer Council is composed of seven members, four of whom are selected by the Governor, one by the Lieutenant-Governor and two by the Speaker of the House of Representatives. One of the members chosen by the Governor and Lieutenant Governor and two of the House speakers' recommendations must be selected from lists supplied by the Rhode Island AFL-CIO. This group of citizens then appoints the Executive Director with the advise and consent of the Senate, who then serves as the Consumer Counsel.

The District's Counsel, although appointed by the Mayor, must be approved by the City Council; the Council, in turn, holds public hearings on the appointment.

The method of choosing the People's Counsel in Washington, D.C. and Rhode Island set these two states apart from the others because they both involve some input from the public in their selection processes.

(2) People's Counsel Resources

If the People's Counsel is to be effective and influential in the utility regulation process, the office must be independent, adequately funded and well-staffed. It is very difficult to determine the degree of independence of a People's Counsel office, but the location and the jurisdiction of the office serves as an indicator of how independent the legislators intend the office to be. Only Connecticut, the District of Columbia and Maryland have offices within the PSC. However, all three are designated by statute as independent offices. Georgia is the only state where the People's Counsel is under the jurisdication of the state Public Service Commission. The remaining offices are either divisions of state agencies, or are accountable to legislative committees, the Governor, or in the case of Rhode Island, an independent Council.

Funding for the office obviously determines flexibility and higher potential for effectiveness. Looking over three years of operation budgets range from $35,000 in Connecticut to $825,000 in New York.

Florida, Indiana, Missouri, Montana and Rhode Island have all received increases in funding since FY 1975. For example, in 1975 the Missouri Public Counsel received $50,000 from the Governor's Emergency Fund and received $100,000 for 1976. They have requested $183,000 for 1977. Connecticut jumped from $35,000 for eighteen months in 1974-1975 to $161,696 in FY 1977.

The only state which appropriated less money in FY 1977 is New York. The New York Utility Intervention Program originally received $825,000. Yet in 1977 the program was granted only $366,632 -- a drastic decrease of $438,368.

Some People's Counsel offices have other funding sources besides the state legislature. In some cases, money is assessed by the Public Service Commission or the department or agency head. In New Jersey the state Public Advocate may assess the utilities for its operating expenses. In addition, the Rate Counsel also bills the utility proposing rate increases. The utilities may be assessed up to $500,000 annually.

As each People's Counsel office receives different funding, it follows that the number of counsel staff will also vary. New Jersey, New York and Florida's Counsels have the largest staffs. The New Jersey Rate Counsel is equipped with eleven full-time attorneys, one economist and six secretaries. The lawyers on the staff each possess other professional qualifications: accounting, economics, business marketing and physics.

The utility intervenor program in New York is second with six lawyers, one rate analyst, one engineer, one systems analyst and three secretaries. Florida has one counselor, two attorneys, two utility rate analysts, two legal secretaries, one administrative assistant and one part-time law student. The states with the smallest staff are Georgia with three part-time people, and Connecticut with four.

(3) Statutory Powers and Duties of People's Counsels

The third and last crucial aspect of the consumer advocates office are the powers and duties of the office. In most cases statutes are written broadly, leaving it up to the People's Counsel to decide when and how to best represent the citizenry. The People's Counsel's main responsibility is to appear before the Public Service Commission on behalf of consumers. For example, the District of Columbia People's Counsel "shall represent and appeal for the people of the District of Columbia at hearings of the Commission. . ."[1] The Connecticut statute is a bit more explicit; the Consumer Counsel should "act as the advocate for consumer interests in all matters which may affect (as considered by the commission) the Connecticut consumers with respect to Public Service Companies."[2]

Of all the People's Counsels, Rhode Island appears to have the most general legislative mandate. The act states that the Consumer

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[1] Title 42, Chapter 42, section 1

[2] Annotated code of Maryland Article 78-15B Section 15

Counsel's job is "to promote the health, prosperity and welfare of the people of the state of Rhode Island by providing representation for the consuming public in all matters wherein the cost, quality and extent of services and commodities are fixed or regulated by law."[1]

Only four states clearly specify what authority the People's Counsels possess in rate proceedings: Georgia, Maryland, Montana and Rhode Island. These statutes mention that the People's Counsels may intervene and/or appear as a party in interest. Maryland describes the rights assured by a party status, "the right to present his case, to cross examine, to object, to be heard and to appeal."[2]

The right to intervene in administrative and judicial proceedings on the federal and state levels is granted in nine of the eleven states. Missouri neglects to mention whether their Public Counsel may or may not participate in these proceedings. The Washington, D.C. People's Counsel has not tried to intervene in federal proceedings and the statute does not specify whether or not the office has the authority.

For the most part the People's Counsel is authorized to decide which case to enter without the permission of the Agency or office which oversees his functions. For example, the Maryland Statute reads, "He shall appear before the Commission and the courts on behalf of the interests of the public in general in any matter or proceeding, of which the Commission has original jurisdiction and in which he may deem the public interest."[1] However, in seven states, (Connecticut, the District of Columbia, Georgia, Indiana, Maryland, New Jersey and New York), the Public Service Commission, or other state official, can prevent the Counsel from intervening.

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[1] Title 42, Chapter 42 section 1

[2] Annotated code of Maryland Article 78-15B Section 15

Once the Counselor becomes involved in a case, he must somehow determine what the "public interests" are, and which to represent. The statutes have not provided any guidelines for ten of the eleven offices. They leave this up to the Counselor. The New Jersey statute defines "the public interest", but even this section does not explain which public interest to represent. Three of the People's Counsel offices (D.C., Montana, Rhode Island) do focus on the need for citizen input and these could conceivably serve as possible guidelines. The District of Columbia and the Montana People's Counsel Acts imply that the counselors should develop a relationship with consumers. This can be accomplished by meeting and conferring "with members or representatives of the consuming public" or "assuring the intent of the users . . . is adequately represented in the hearings by informing the public and providing consultation services and technical assistance."[2] The Rhode Island statute takes a slightly different tack by stressing the need for gathering information "on all matters affecting consumer interest." In addition, the Executive Director shall promote the citizen cause by encouraging consumer education and legislative action.

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[1] Annotated Code of Maryland, Article 78-15

[2] 1973 Montana Session Laws, Chapter 65 RCM 1947, 70-701 to comply with Montana constitution of 1972, Article XIII, Section 2 Public Law 93-614 93rd Congress, HB 17450 January 1975

All of the offices except Missouri's have access to Public Service Commission records. These records include all of the material the utility companies provide to the Commission. However, if the People's Counsel would like to examine utility company records not held by the Commission, the office must request that the commission request or subpoena the documents. The Montana Consumer Counsel Act goes further than most and specifies that the counselor may have direct access to inspect the business and corporate records of any regulated company. New York's Consumer Protection Board must rely on the Public Service Commission to investigate a definite operating disadvantage for the Utility Intervention Program.

The above information is contained in outline form in the following profiles.

CONNECTICUT

1. State: Connecticut

2. Title of Office: Office of Consumer Counsel

3. Statute: Created - Public Act 74-216 (Section 6) May 3, 1974

   Amended - Public Act 75-486 (Section 1.16-11.29) Jan. 1975 (Substitute Senate Bill No. 1081); 19 CONN. GEN. STAT. ANN. §170b (1958)

4. Office Began Functioning: July 1, 1974

5. Name of Counselor: David Silverstone
   State Office Building
   165 Capital Ave.
   Hartford, Conn. 06115

6. Appointment: Originally appointed by the PUC commissioners, under the amended act of 1975. He was later selected by the Governor with the advice and consent of legislature. The Consumer Counsel term is five years. He may be released only if the Governor initiates impeachment proceedings.

7. Statute qualifications: "The Consumer Counsel shall be an elector of this state and shall have demonstrated a strong commitment and involvement in efforts to safeguard the rights of the people." (19 Conn. Gen. Stat. Ann. §170(b).

8. Counsel's professional background: 1971-72 Staff Member, New York Community School System Project to evaluate legal services for the poor, and U.S. Commission on Civil Rights. 1972-1974, Legal Services Lawyer in Connecticut.

9. Independence of office: Office is housed within the Public Utility Control Authority (PUCA) but a legally independent State Agency has been established according to the 1975 Act.

10. Budget:
    a. July 1974 - December 1975 -- $45,000
       December 1975 - June 1976 -- $90,000
       July 1976 - July 1977 -- $128,000
       Presently, $60,000 of the $128,000 has been appropriated for fiscal year 1976-77.

    b. Power to assess: The PUCA may assess utilities only under certain circumstances. These funds, however, may not be used by the Consumer Counsel.

Connecticut

11. Staff: Hired by Consumer Counsel
    a. Number- (4) the Consumer Counsel, 1 attorney, 1 financial and management analyst, and 1 secretary.
    b. Consultants - Since Dec. 1, 1975, the office has hired five expert witnesses.

12. Number of cases: approximately 100 annually; 4 appeals

13. Statutory description of duties: "to act as the advocate for consumer interests in all matters which may affect Connecticut consumers with respect to public service companies." (19 Conn. Gen. Stat. Ann. §170(b).)

14. Right to intervene in state administrative and judicial proceedings: Yes

15. Right to intervene in federal administrative and judicial proceedings: Yes

16. Access to information: "The office of Consumer Counsel shall have full access to the commission's experts if practicable, and shall have the benefit of all facilities or information of the commission carrying out the duties of the office." (19 Conn. Gen. Stat. Ann. §170(b).

17. Statute's mention of citizen participation: None

DISTRICT OF COLUMBIA

1. State: District of Columbia
2. Title of the office: Office of People's Counsel
3. Statute: 43 D.C. CODE ANN. 201 (1975 Supp.)
4. Office began functioning: March 31, 1975.
5. Name of Counsel: Annice Wagner
   1625 I St., N.W., suite 417
   Washington, D.C. 20006
6. Appointment: The Mayor of Washington, D.C. appoints the People's Counsel for a 3 year term with the advice and consent of the City Council.
7. Statute qualifications: The People's Counsel must be "admitted to practice before the District of Columbia Court of Appeals" (43 D.C. Code 205 (1975 Supp.).
8. Counsel's professional background: Engaged in private civil practice; General Counsel for the National Capital Housing Authority.
9. Independence of office: Office is housed within the PSC, but is designated as an independent office.
10. Budget:
    a. $100,000 per annum.
    b. Power to assess utility companies: The People's Counsel may assess the utility companies for expenses incurred during the proceedings or investigations.
11. Staff:
    a. Number: (5) - 2 attorneys, 1 program analyst, 2 secretaries. Two people are paid by the Comprehensive Employment Training Act (CETA).
    b. Consultants - Hired as needed.
12. Number of cases: March 1975 to June 1976 - 14 - 2 electric, 2 telephone, 2 gas, 1 taxi, 3 Court of Appeals, 4 others.

District of Columbia

13. Statutory description of duties: "Shall represent and appeal for the people of D.C. at hearings of the Commission, may represent and appear for petitioners appearing before the Commission for purposes of complaints in matters of rates or services, rates and valuation of properties of public utilities, provide information, dissemination, consultative services and technical assistance." (43 D.C. Code Ann. 201).

14. Right to intervene in state administrative and judicial proceedings: Yes

15. Right to intervene in federal administrative and judicial proceedings: As of yet, this has not been tested.

16. Access to information: "May investigate the services given by the rates charged and by the valuation of the properties of the public utilities under the jurisdiction of the Commission." (43 D.C. Code Ann. 201).

17. Statute's mention of citizen participation: "The People's Counsel is authorized to develop means to otherwise assure that the interests of users of the product, or of services furnished by public utilities under the jurisdiction of the commission are adequately represented in the course of proceedings before the commission including public information dissemination, consultation services and technical assistance." (43 D.C. Code Ann. 201).

FLORIDA

1. State: Florida

2. Title of office: Office of Public Counsel

3. Statute: House Bill No. 1542, Chapter 74-195, Florida Statutes, June 1974;
   13B FLA. STAT. ANN. §1, ch. 350 (1976 Supp.)

4. Office began functioning: September, 1974.

5. Name of Counselor:
   Woodie A. Liles
   Office of Public Counsel
   Holland Building
   Tallahassee, Florida

6. Appointment: Joint legislative auditing committee. Annual confirmation.

7. Statute qualifications: "P.C. shall be an attorney admitted to practice before the Florida Supreme Court. No officer or full-time employee of the public counsel shall actively engage in any other profession; serve as the representative of any political party or any executive committee or other governing body thereof; serve as an executive, officer or employee of any party, committee, organization or association or receive renumeration for activities on behalf of any candidate for public office. (Ch. 350.061,§1.)

8. Counsel's professional background:
   1953-54 - Practiced law with Sanders & McEwen in Orlando, Fla.
   1954-65 - Law practice in Plant City and Tampa, Fla.
   1965-73 - Served on Second District Court of Appeals
   1970-71 - Chief Judge of Second District Court of Appeals
   1973-75 - Practiced with Hobbs, de la Parte & Liles, P.A., Tampa, Florida
   1975 - Appointed Public Counsel

9. Independence of office: The Public Counselor is under the guidance of a non-partisan legislative committee, and housed in the state office building.

10. Budget:
    a. August 1, 1974 - June 31, 1975 -- $130,000
    July 1, 1975 - June 30, 1976 -- $192,892
    July 1, 1976 - June 30, 1977 -- (requested $302,823), $2,000 allotted for expert witnesses

Florida

10. Budget: b. Power to assess utility companies. The Public Counsel Budget is appropriated from General Revenue.

11. Staff: a. Number -(8)- The Public Counselor, 2 attorneys, 2 utility rate analysts, 2 legal secretaries, 1 administrative assistant and one part-time law student.

b. Consultants - expert witnesses hired as needed.

12. Number of cases: (14) 4 electric companies, 5 telephone, 1 water and 4 sewer. 16 appeals to the Supreme Court of General Investigation Dockets.

13. Statutory description of duties: "Provide legal representation for the people of the state in proceedings before the commission...prepare and issue reports, recommendations and proposed orders to the commission, governor and legislature. Seek review of commission findings."
(Ch. 350.0611, §1)

14. Right to intervene in state administrative and judicial proceedings:
Yes

15. Right to intervene in federal administrative and judicial proceedings:
Yes

16. Access to information: "P.C. shall have access to and use of all files, records, data of the commission available to any other attorney representing parties in a proceeding before the commission." (Ch. 350.0611, §1, House Bill 1542)

17. Statute's mention of citizen participation: None.

GEORGIA

1. State: Georgia

2. Title of office: The Consumers' Utility Counsel

3. Statute: GA. CODE ANN. §93-301 (1971).

4. The office began functioning: July 1, 1975.

5. **Name of Counselor:** . W. Wheeler Bryan
BRYAN, RAMOS and ARNOLD
310 Rhodes Haverty Building
134 Peachtree St., N.W.
Atlanta, Ga. 30303

6. Appointment: Mr. Bryan was chosen by and serves at the pleasure of the Attorney-General for a five-year term. The position is part-time.

7. Statute qualifications: The Counsel "...shall be a practicing attorney qualified by knowledge and experience to practice in public utility proceedings." (Ga. Code Ann., Sec. 93-301a(b) (1975 Supp.)

"During (the Counsel's) term and for 5 years thereafter, the Counsel shall not provide legal services or be employed by a public utility company." (Ga. Code Ann., Sec. 93-301a(b) (1975 Supp.).

8. Counsel's professional background:

1967-1969 -	Attorney for the State Law Dept., and later Assistant Attorney General.
1970-	Director of the Administrative Procedure Act Division and Deputy Commissioner of the Georgia Building and Loan Associations for the Secretary of State's office.
1971-1975 -	Private practice and later vice president and General Counsel for the Myrick companies.
1975-	Private practice and appointed to Consumer's Utility Counsel on July 1, 1975.

9. Independence of office: The Consumers' Counsel was assigned to the Public Service Commission for "administrative purposes only," according to Ga. Code Ann. 93-301 (1971).

The Consumer Counsel's office shall:
"1. Exercise its quasi-judicial, rule-making, licensing or policy-making functions independent of the department and without approval or control of the Department."
Mr. Bryan presently operates the Consumer Counsel from his law office.

10. Budget: a. 1975-1976 - The office has been funded out of the Governor's Emergency Fund and a Supplemental Appropriations was made by the 1976 General Assembly. $50,000 is the approximate expenditure for Fiscal Year 1976.

b. Power to assess utility companies: The PSC may assess the utilities.

11. Staff: a. Number: 3 part time; 1 Public Counselor, 1 paralegal and 1 secretary.

b. Consultants - No consultants have been hired.

12. Number of cases: (5) - 1 electric, 2 telephone, 1 motor carrier, and 1 rules proceeding.

13. Statutory description of duties: "Entitled to appear as a party or otherwise, on behalf of the consumers of this state...in all proceedings before the Georgia Public Service Commission which may involve or affect rates for service or services of utilities. (Ga. Code Ann. Sec. 93-329 (1971).

14. Right to intervene in state administrative and judicial proceedings: Yes

15. Right to intervene in federal administrative and judicial prodeedings: Yes

16. Access to information: "The Public Counsel and his staff shall have access to all records, files, reports, documents and other information in the possession or custody of the Public Service Commission," Ga. Code Ann., Sec. 93-305a (1975 Supp.).

17. Statute's mention of citizen participation: The provisions of the statute "...shall not be construed to prevent any party interested in any proceeding, suit or action before the Georgia Public Service Commission, any court or any administrative body, from appearing in person or by counsel in such proceedings, suit or action." (Ga. Code Ann., Sec. 93-306a (1975 Supp.).

INDIANA

1. State: Indiana

2. Title of the office; The Office of the Public Counselor

3. Statute: 8 IND. ANN. STAT. §8-1-1-4 (1973).

4. The office began functioning: 1941.

5. Name of Counselor: Frank J. Biddinger
807 State Office Building
Indianapolis, Indiana 46204

6. Appointment: Mr. Biddinger was appointed by the Governor for a four-year term.

7. Statute qualifications: "The Public Counselor shall be a practicing attorney, and qualified by knowledge and experience to practice in public utility proceedings." (Ind. Ann. Stat. Sec. 8-1-1-4, 54-111).

8. Counselor's professional background:
1966-1970 - Indiana State Senate, Partner Biddinger & Johnson, Attorneys at Law, Marion, Indiana

June, 1974 to present: Indiana Public Counselor

9. Independence of office: The office of Public Counselor is housed in the state office building and is accountable to the Governor. The Governor must approve the use of funds and supervise personnel policies. The office is designated as independent.

10. Budget: a. July 1, 1974 - June 30, 1975 - $106,000 office and $375,000 expert witnesses.

July 1, 1975 - June 30, 1976 - $128,000 office and $375,000 expert witnesses.

July 1, 1976 - June 30, 1977 - $155,000 office and $375,000 expert witnesses.

b. Power to assess utility companies: The Public Service Commission has this power.

11. Staff: a. Number: (6): 1 public counselor, 3 deputy public counselors, 2 secretaries.

b. Consultants: the office uses one firm for all major rate cases. The firm receives $50,000 per case.

12. Number of cases: 345 in the FY 74-75; Electric 139, water 109, gas 32, electric & gas 5, and telephone 60 cases.

13. Statutory description of duties: "To appear on behalf of rate payers, patrons and the public in all hearings before the Commission and in all suits and services, actions in any court which may involve rates for services, etc. (8 Ind. Ann. Stat. §8-1-1-4, 54-111).

14. Right to intervene in state administrative and judicial proceedings: Yes

15. Right to intervene in Federal administrative and judicial proceedings: Yes

16. Access to information: "The P.C. shall have access to the records and files of the commission." (8 Ind. Ann. Stat. §8-1-1-4-, 54-111).

17. Statute's mention of citizen participation: None

MARYLAND

1. State: Maryland

2. Title of office; Office of People's Counsel

3. Statute: 7A MD. ANN. CODE Art. 78, §15B (1964).

4. The office began functioning: 1924, revised, July 1, 1970 and July 1, 1976

5. Name of Counsel: John K. Keane, Jr.
3711 Rhode Island Ave.
Mt. Rainier, Maryland 20822

6. Appointment: John Keane was appointed by the Governor for this part-time position. A bill which would change the job to a full-time position became effective July 1, 1976 (HB. 1361 of 1976 legislative session).

7. Statute qualifications: "Public Counsel shall be an attorney at law of this state." (7A Md. Ann. Code Art. 78, Sec. 14).

8. Counselor's professional background:
1967-1973 - Private practice, Camus and Keane
1972-1973 - Assistant Public Defender
1973 - Private practice

9. Independence of office: It is located within the Public Service Commission building, yet the status is independent.

10. Budget:
    a. July 1, 1974 - June 30, 1975 - $199,327
    July 1, 1975 - June 30, 1976 - $299,892
    July 1, 1976 - June 30, 1977 - $258,411

    b. Power to assess utility companies: Indirectly the State of Maryland assesses utilities for operational cost of Public Service Commission and People's Counsel.

11. Staff:
    a. Number: (6) - 1 public counselor, 3 attorneys, 2 paralegals

    b. Consultants: eleven to seventeen consultants used in 1975

12. Number of cases: FY 1974 - 60 cases
FY 1975 - 50 cases

13. Statutory description of duties: "He shall appear before the Commission and courts on behalf of the interests of the public in general in matters...including but not limited to proceedings with regard to the rates, services or practices, of any public service company. No subpeona power." (Annotated Code of Maryland, Art. 78, Sec. 15).

14. Right to intervene in State administrative & judicial proceedings: Yes

15. Right to intervene in Federal administrative & judicial pro-proceedings: Yes

16. Access to information: "Public Counsel shall have full access to Commissions, records, assistance of the Commission's experts, and the benefit of all facilities and information of the Commission in carrying out his duties." (Md. Ann. Code Art. 78, Sec. 15).

17. Statute's mention of citizen participation: None

MISSOURI

1. State: Missouri

2. Title of office: Office of Public Counsel

3. Statute: Omnibus State Reorganization Act of June 1974 created a Department of Consumer Affairs, Regulation and Licensing; V.A.M.S. 3A, prec. Ch. 26, Appendix B, §4, §13, §14.(1976 Supp.).

4. The office began functioning: July, 1974.

5. Name of Counselor:
   William M. Barvick
   Office of Public Counsel
   911-A Leslie Boulevard
   Jefferson City, Missouri 65101

6. Appointment: The Director of Department of Consumer Affairs

7. Statute qualifications: None specified.

8. Counselor's professional background:
   1966-1970 - Regional Director of the Office of of Economic Opportunity and Legal Services Program
   1971-1974 - Associate Professor of Law

9. Independence of office: The Office of Public Counsel is a division of the Department of Consumer Affairs, Regulation and Licensing. It is independent of the Public Service Commission.

10. Budget:
    a. July 1, 1974 - July 30, 1975 - $50,000 from the Governor's Emergency Fund.
    June 1, 1975 - July 30, 1976 - $100,000
    June 1, 1976 - July 30, 1977 - $183,000 requested.

    b. Power to assess utility companies: The Public Service Commission funds are levied from the regulated utility companies but these funds are restricted for use only by the PSC.

11. Staff:
    a. Number - (7) - 1 public counselor, 3 attorneys, 3 secretaries

    b. Consultants - There is a small fund appropriated for hiring outside consultants.

Missouri

12. Number of cases: 30 or 40

13. Statutory description of duties: "To represent the public in all cases before the commission and to advise the public and the municipalities of their rights under the PSC law. The powers and duties of the PSC General Counsel were transferred to the Office of the Public Counsel under the 1974 Omnibus State Reorganization Act, Chapter 386.280.

14. Right to intervene in state administrative and judicial proceedings: Not specified

15. Right to intervene in Federal administrative and judicial proceedings: Not specified

16. Access to information: Not specified

17. Statute's mention of citizen participation: None

MONTANA

1. State: Montana

2. Title of office: Office of the Montana Consumer Counsel

3. Statute: 4 MONT. REV. CODES ANN. §70-707 (1975 Supp.)

4. The office began functioning: August 1, 1973.

5. Name of Counselor:
   Geoffrey L. Brazier
   Montana Consumer Counsel
   330 Fuller Avenue
   Helena, Montana 59601

6. Appointment: The Legislative Consumer Committee (composed of four legislators, 1 Democrat and 1 Republican from each of the 2 state houses)

7. Statute qualifications: The Consumer Counsel shall have a "bachelor's degree or equivalent form an accredited college or university with a major or minor in accounting or allied field; be admitted to practice law in Montana courts, and in the United States District Court for the State of Montana." (R.C.M. 1947, 70-701).

8. Counsel's professional background:

1957-1973	- Attorney for Montana Milk Control Board Self-employed in private law practice.
1964-1973	- Executive secretary for Montana Milk Control Board
1971	- Deputy County Attorney
1973	- Montana Consumer Counsel

9. Independence of office: The Consumer Counsel is accountable to the Legislative Consumer Committee and functions within the legislative branch. The Montana Consumer Counsel prefers this position rather than placing the office under the executive branch.

10. Budget:
    a. July 1, 1974-June 30, 1975 - $110,000
       July 1, 1975-June 30, 1976 - $165,753
       July 1, 1976-June 30, 1977 - $160,000

    b. Power to assess utility companies:
       The Department of Revenue computes and

levies the Consumer Counsel office funding against the utility companies' gross operating revenues.

11. Staff:

a. Number: (4) - 1 Consumer Counsel, 1 secretary, 1 transportation expert, 1 utility expert on a monthly retainer.

b. Consultants: Mr. Brazier usually hires one consultant per major rate case.

12. Number of cases: During 1975: 41 motor carrier rate cases before PSC
7 railroad cases before PSC
16 utility rate cases before PSC
Assorted service cases, such as railroad line abandonments
9 cases before Interstate Commerce Commission
1 case before the Federal Power Commission
1 case before the Civil Aeronautics Board

13. Statutory description of duties: "May appear at any public hearings conducted by the Commission, as the representative of the consuming public, on all matters which come before the Commission...shall have all the rights and powers of any party in interest appearing before the Commission regarding examination and cross-examination of witnesses." He "may institute proceedings before the Commission against regulated companies and may examine any officer, director, manager or employee of any regulated company under oath in any commission proceeding." He "may appear in state and federal agency and court proceedings." (R.C.M. 1947, 70-707.)

14. Right to intervene in state administrative & judicial proceedings: Yes

15. Right to intervene in federal administrative & judicial proceedings: Yes

16. Access to information: "The Consumer Counsel may inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties along with the power to subpoena records or a witness."

The Consumer Counsel has all investigatory and discovery powers in administrative proceedings that are usually availabe to parties in civil court proceedings. In administrative proceedings, he may examine agents of regulated companies and inspect their records. (R.C.M. 1947, 70-707 (3) and (4).

17. Statute'e mention of citizen participation: "Shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate." (R.C.M. 1947, 70-707 (6).

NEW JERSEY

1. State: New Jersey

2. Title of office: Division of Rate Counsel

3. Statute: 52 N.J. REV. STAT. §27E1 et seq. (1976 Supp.)

4. The office began functioning: May 13, 1974. Before May, 1974, the Attorney General's Office would hire attorneys to represent citizens before the Public Utility Commission.

5. Name of Counselor:
   William Gural
   Director, Division of Rate Counsel
   10 Commerce Court, Room 411
   Newark, N.J. 08625

6. Appointment: Director of Rate Counsel is appointed by the New Jersey Public Advocate. This is a cabinet level office responsible for a number of other public interest oriented divisions.

7. Statute qualifications: "The Director of the Division of Rate Counsel shall be an attorney at law of this state." (52 N.J. Rev. Stat. §27E-3).

8. Counsel's professional background:
   1950 - Admitted attorney at law
   1953-1958 - Member, Hillside Township governing body
   1959-1974 - Appointed Deputy Attorney General and Counsel to the Department of Public Utilities
   1974- Director of the Division of Rate Counsel

9. Independence of office: The Rate Counsel is a division of the Department of the Public Advocate; an independent agency of the Executive Branch.

10. Budget:
    a. July 1, 1974 - June 30, 1975 - $400,000
    July 1, 1975 - June 30, 1976 - $400,000
    July 1, 1976 - June 30, 1977 - $400,000

    b. Power to assess utility companies: The Public Advocate has the authority to assess utility companies. $400,000 is the average amount the Division of Rate Counsel assessed the utilities for operating expenses. The Rate Counsel will bill the utility companies on each rate case. The utility company may be assessed up to 1/10 of 1% of their previous year's revenue.

11. Staff: a. Number - (18) - 10 attorneys, 1 PhD physicist, 1 registered nurse, 1 MBA in marketing, 1 economic undergraduate major, 1 computer specialist, 1 accounting background, 1 with graduate study in actuarial science. The Rate Counsel has had 15 years experience in utility law. There are also one economist and 6 secretaries in the office.

b. Consultants - The division has hired twenty different consultants for the FY 74-75.

12. Number of cases: Fiscal year 1974-1975 - 146
Fiscal year 1975 - 1976 - 99
These figures include Blue Cross, Blue Shield Medical cases. The majority are utility cases, however.

13. Statutory description of duties: "The Division of Rate Counsel shall represent and protect the public interest in proceedings before and appeals from any state department, commission, authority, council, agency or board charged with the regulation or control of any business, industry, or utility regarding a requirement that the business, industry or utility provide a service or regarding the fixing of a rate, toll, fare or charge for a produce service. (52 N.J. Rev. Stat., §27E-4).

14. Right to intervene in state administrative and judicial proceedings: Yes.

15. Right to intervene in Federal administrative and judicial proceedings: Yes.

16. Access to information: In most cases, the Rate Counsel has information discovery procedure in obtaining information from the PUC and Utility Companies. The Rate Counsel has the right to request that the PUC subpoena documents or other information requested.

17. Statute's mention of citizen participation: None.

NEW YORK

1. State: New York

2. Title of office: Consumer Protection Board, Utility Intervenor Program

3. Statute: (March 16, 1970) Laws of New York, 193rd Session 1970, Vol. 2, §17B; McKinney's Exec. Law §550 et. seq. (May 30, 1974).

4. The office began functioning March 16, 1970; April 16, 1975 Utility Intervention Program.

5. Name of Counselor:
   Rosemary S. Pooler
   Chairwoman and Executive Director
   State Consumer Protection Board
   99 Washington Avenue
   Albany, N.Y. 12210

6. Appointment: The Governor with the advice and consent of the General Assembly.

7. Statute qualificiations: None specified.

8. Executive Director's professional background:
   1959-1969 - Law practice
   1971-1973 - Director of City's Consumer Protection Unit
   1973-1975 - Syracuse City Councilor and Regional Coordinator for the New York Public Interest Research Group (NY PIRG)

9. Independence of office: The Consumer Protection Board (which encompasses the utility intervention program) is a state agency.

10. Budget:
    a. For utility intervention program:
       April 1, 1974 - March 31, 1975 - $825,000
       April 1, 1975 - March 31, 1976 - $558,000
       April 1, 1976 - March 31, 1977 - $366,632

    b. Power to assess utility companies: The funds levied by the PSC against the utility companies are not available for use by the Utility Intervention Program.

11. Staff:
    a. Number: (12) - 6 attorneys, 1 rate analyst, 1 engineer, 1 systems analyst and 3 secretarial staff.

    b. Consultants: $125,000 for outside consultants in 1975-1976. $40,000 for outside consultants in 1976-1977.

12. Number of cases: 27 in 1975.

13. Statutory description of duties:
    A. May receive complaints fo consumers and refer them to the appropriate federal, state or local agency.
    B. Advise and make recommendations to the Governor on matters affecting the consumers of the state. Promote, encourage and protect the legitimate consumer interests.
    C. Initiate, intervene and participate before the Public Service Commission as authorized and "where he deems such initiation, intervention and participation necessary." (L.1974 c.650, §89(i), as amended by L. 1975 c.651).

14. Right to intervene in state administrative and judicial proceedings:
    Yes

15. Right to intervene in Federal administrative and judicial proceedings:
    Yes

16. Access to information: The Public Service Commission has the right to conduct investigations if there are a substantial amount of complaints by customers...or if the Consumer Protection Board files a complaint. "The Consumer Protection Board does not have subpoena power." (L.1974 c.650, §89(i), as amended by L.1975 c.651.)

17. Statute's mention of citizen participation: None.

RHODE ISLAND

1. State: Rhode Island

2. Title of office: Rhode island Consumers' Council

3. Statute: 6A R.I. GEN. LAWS ANN. §42-42-1 (1956).

4. The office began functioning: December, 1966.

5. Name of Executive Director: Edwin Palumbo, Executive Director
Rhode Island Consumers' Council
365 Broadway
Providence, R.I. 02909

6. Appointment: 7 Member Consumers' Council, of which 4 members are government appointees. One is selected by the Governor from a list submitted by the Rhode Island AFL/CIO, one is appointed by the Lieutenant Governor, and two are appointed by the Speaker of the House of Representatives. The term of membership is five years.

7. Statute qualifications: "He shall be qualified by training and experience to perform the duties of his office." (6A R.I. Gen. Laws Ann. §42-42-1).

8. Executive Director's Professional Background:
1966 - Director Rhode Island Consumer's Council
Member, economics Department, Providence College
State Representative for Consumer Product Safety Commission
Steering Committee member for Conference of Consumer Organizations and chairman of its utility panel.

9. Independence of office: The Consumers' Council is an independent office accountable to the 7 member body of citizens.

10. Budget: a. July 1, 1974 - July 30, 1975 - $132,000
July 1, 1975 - July 30, 1976 - $150,000
July 1, 1976 - July 30, 1977 - $144,000

b. Power to assess utility companies: The PSC may assess the utilities up to $50,000 per year.

Rhode Island

11. Staff: a. Number: (6) - 1 Executive Director, 1 Chief of Consumer Affairs, 1 Consumer Specialist, 1 credit counselor, 3 clericals

b. Consultants:

12. Number of Cases: Approximately 350 monthly. This number includes citizen complaints.

13. Description of duties: "To promote the health, prosperity and welfare of the people of Rhode Island by providing representation in all matters wherein the cost, quality or extent of services regulated by law of the general assembly." 6A R.I. Gen. Laws Ann. §42-41-1.).

14. Right to intervene in state administrative & judicial proceedings: Yes.

15. Right to intervene in Federal administrative & judicial proceedings: Yes.

16. Access to information: The Consumers' Council is "to secure all available information on utility rates... and make such information available to the public." (6A R.I. Gen. Laws Ann. 42-41-5).

17. Statute's mention of citizen involvement: "The Consumers' Council shall conduct surveys, studies and research on allmmatters affecting consumer interests, recommend legislative programs to protect consumers, and further consumer education. (6A R.I. Gen. Laws Ann. 42-41-5).

4. CITIZEN COMMENTARY AND INTERPRETATION

a. TECHNICAL INFORMATION BARRIERS TO PUBLIC PARTICIPATION

While rate proceedings provide the major focus for citizen involvement and a legal opportunity for the citizen to influence how utilities set their rates, the legal and technical nature of the proceedings does hinder individual citizen involvement. According to a citizen leader in Chicago:

> Regulatory proceedings are a hopeless tangle for a grass-roots organization. They stretch on longer than an action organization's patience. They require a style of argument that is subdued, footnoted and colorless.[1]

Official parties in rate proceedings argue that effective testimony at hearings must be expert testimony. John Hofman, an attorney assisting the New Jersey Rate Counsel, says:

> The effective testimony you would have to have from a citizen's group is difficult because most of the testimony will have to be expert testimony. I am trying to figure out how the lay person could present effective testimony. Now, if the citizen's group is trying to get across the point that you snould not have nuclear power - - I don't know how they are going to get that across unless they can get expert people. If a utility brought in three physicists who said there is no problem with nuclear, it is safe; and if the citizens brought in three people who said nuclear power is unsafe, who would you listen to? That is the problem with citizen testimony. (John Hofman, New Jersey, 11/24/75)

William Gural, the New Jersey Rate Counsel, agrees:

> You really have to grasp what the capital requirements of the company are, what the rate of return should be, what the company is paying to borrow money. It is a very technical thing. It is hard to get the average man-in-the-street to approach those areas with meaningful testimony. It is very hard for the average customer to follow the case. (William Gural, New Jersey, 11/25/75)

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[1] Paul Booth, "Characteristics of Utility Fights," Midwest Academy, Chicago, Illinois, April 1974.

The average citizen, not being trained in utility rate setting, cannot address the issues that are appropriate at the hearing. According to Steve Regenstreif, a Washington, D.C. union official:

> When it gets into pricing, Lifeline, the whole price structure, rate of return, I doubt very much whether most citizens, even the most interested people like presidents of civic associations, know the ins and outs of the issues. All they know is their gut reactions. (Steve Regenstreif, Washington People's Counsel, 8/75)

This necessity for expertise leaves the average citizen out:

> The difficulty is in finding citizens who are free and expert enough to participate in the rate proceedings. (Bill Beren, New Jersey, 11/24/75)

> After we have done the work, we do not testify. In the very beginning when we came here, we couldn't have testified on anything because we really did not have any expertise. All we knew was what had to be done, we knew what the problems were. (Community Leader, Rhode Island, 11/19/75)

What lay citizens think the problems are -- political or economic or inability to pay -- they express in non-technical terms, what many citizens interviewed referred to as "human" terms. According to citizen intervenors, commissions often rule such discussion to be inappropriate for the hearings:

> These poor people would stand there on an emotional basis, begging for mercy or demanding justice. When they were finished, the Commissioner would say that that is not really relevant, there are no facts there. We need facts. (Peter Turcott, Rhode Island, 11/19/75)

> The People's Counsel is more concerned with technical matters and legal matters. They don't get into the emotional or economic impact on people. The People's Counsel is not so fully staffed that it can investigate the human stuff. They're more concerned with the legal side of these utility requests, and that's a big job in itself. The utility has heavily paid lawyers on its staff. Really, the People's Counsel just doesn't have the staff to make total coverage. (Charles Winn, Rhode Island, 8/75)

According to Peter Turcott and Dick Scapeli, community leaders in Rhode Island, non-factual input is not always well-received:

> The first hearing we went to was a disaster. We did not know anything and we listened. We sat in an auditorium that was packed. I was amazed at the people; there were a lot of old people and working class, not knowledgeable people. They were just desperate.
>
> People who get hurt the worst were there in force. They brought them in buses. The religious groups seemed to be the ones most active. They put in a microphone and the people were allowed to go up and talk, but it was on an emotional level.
>
> There were not any facts involved, it was strictly an emotional thing...This was after they had a closed hearing and we demanded an open hearing. They had their hearings during the day and obviously the guy who is working in a shop or is on the road just does not have an opporutnity to go to these hearings. There was no way they could attend these hearings and find out what was going on.
>
> The hearing, you could see, was just a little show. The officials sat there with smirks on their faces. In fact, some of the people stood up at the end in such a rage that they said, "wipe that smirk off your face." (Peter Turcott and Dick Scapeli, Rhode Island, 11/9/75)

Several citizens interviewed feel that the proceedings cater to the middle class and exclude those not fitting the middle class mold:

> I think the People's Counsel is trying to represent the middle class. But I am concerned with something else. I am concerned with the poor, because they don't have a voice. They're the people I'm concerned with.
>
> We know the classes of people who need help the most. The blacks, the people who don't speak English, the elderly and the very young. Those four groups really get it in the neck. And if the People's Counsel surmises over the telephone that you might be black, or you speak with an accent or you sound

> naive and young or you sound elderly and frail, they won't bother to help you. You know, it's just a kind of indifference that I guess happens to officials if they are cut off from the community. (Community Leader, Rhode Island, 11/19/75)
>
> I felt the only level we could beat them on was on their own terms. We had to wear the clothes they wore. We had to look like them and we had to speak like them. We had to come up with facts and that was the only way we felt they could be beaten. (Peter Turcott, Rhode Island, 11/19/75)

In short, utility rate proceedings have evolved into an extremely complex matter involving lawyers, engineers, accountants and economists. The labyrinthine legal-technical setting for the proceeding goes far beyond the untutored layman's experience. This complexity and intricacy strongly inhibits active participation by citizens. Attorneys are the major actors in the policy-making proceedings; technical experts supply the substance on which the decisions are made. Citizens are assigned the role of passive observers who must depend on others to decide what is in their best interest.

Citizen views on the need for technical information -- economics, accounting, engineering -- vary from strong skepticism to ready acceptance. Those who have formally intervened in rate proceedings differ from those who have not. Community organizers, who do not, doubt that technical data has much influence on rate decisions:

> It is frustrating when you know all the things that are happening around you, and all the money is being wasted on studies that we can't stop. We write letters saying we object to this study, please do something about this. This is tax-payers' money and you're just blowing it. The studies are full of statistics and absolutely meaningless. (Ruth Altman, Rhode Island, 11/19/75)

> The People's Counsel has not been working too closely with us and it seems like they consider themselves to be more effective if they don't get too involved with the man-in-the-street. They fight the utilities on the basis of the rate requirements, a lot of legalistic gobbledygook. (Charles Winn, Rhode Island, 8/75)
>
> The People's Counsel tries to maintain an attitude of objectivity which I personally think is a waste of time if you want to get anything done. (Nick Easton, Rhode Island, 7/21/75)

These community organizers feel that influencing a rate decision could be most effectively done, not by technical argument, but by political action and information on who has the power:

> I said to the People's Counsel, "You are going to have to build a constituency, and that is how you will get support from the people. Or, you are just going to lose all your credibility sitting there arguing about their numbers and you will lose the public."
>
> I do not think the PC needs an economist and I do not think he needs a lawyer. I do not think it is relevant. A scientist would not help us. I am really not interested in how the utility companies function. I am interested in who owns them, because that is what makes the rates so high. (David Truscoff, Connecticut, 11/17/75)
>
> No matter what kinds of reasonable arguments you present, people respond to pressure, and people are not totally rational, impartial beings. They feel pressure that has an influence upon their decision, no matter how rational they are supposed to be, because they just don't operate that way. (Steve Regenstreif, D.C., 6/75)

Those interviewed who had been formal intervenors agree that political aspects of interventions are important, but stress that a strong technical case is essential to change policy:

Mass hysteria is only effective to a certain point. The utility comes to you with technical needs and you cannot knock those down with hysteria. You have to go into their technical requests and see if you can pick it apart with technical information. There is just no other way. (Peter Turcott and Dick Scapeli, Rhode Island, 11/19/75)

I think the crucial thing that citizens can do in a technical subject is to apply political pressure, by contacting their elected representatives or taking part in organizing efforts, or by just attending hearings in person.

People can tell their concerns about health and testify to some extent but obviously they aren't the ones who are going to present the technical effects of sulfates or whether the federal standard on sulfur oxide is sufficient protection. So what you're doing there is combining citizen input of a political nature with technical information which we attempt to coordinate with the experts.

The PC does a very fine job of working on the nitty gritty issues of utility rates. He works on the same utility business every day. He takes the proposal, goes over it in a very technical way, attempts to convince the commission to take $100,000 out here, take two million out there, the rate of return is too high, there is stuff included that should not be in there, and he produces the results that is a measurable reduction of say a million... he has the goal of getting the Public Utility Commission itself more oriented in certain directions towards consumers' needs. (Brian Sullivan, Conn., 11/17/75)

I think every one should understand accounting because having attended these utility rate hearings, I find that unless you really understand these financial statements and are familiar with the terminology and the tricks that can be used... (Claire Schiff, N.J., 7/18/75)

In this state the Public Utility Commission is really very weak and a very political body. I think the public advocate has a great opportunity to present a rational policy to the PUC. Good data and testimony and good argument can really turn that commission around. (Ed Lloyd, N.J., 8/6/75)

Not all citizen groups interviewed, then, felt that technical information was useful and important for them to achieve their goals. Different types of citizen organizations value different types of information. Community organizers who don't intervene on rate proceedings stress the need for power structure information and downplay the need for technical data and analysis; public interest lawyers and other professional who do intervene place the stress the other way around. To be useful information has to be tailored to each user.

Problems citizen groups have is obtaining access to technical information and to expertise is the subject of the following two sections.

Access to Technical Information

Lack of access to technical information hinders citizens from participating in decision-making. At times, the volume of material becomes literally overwhelming. Studies can run from 500 to several thousand pages, ironically due in part to citizen pressure for more comprehensive examination of social, economic, and environmental factors. David Truscoff of The Committee for Lower Utility Bills in Connecticut believes the very volume of material is evidence that even People's Counsels cannot match the technical resources available to a utility:

> The first day the Consumer Counsel was in the hearing room he was seated behind the desk, and the Commissioner, smiling, said to the attorneys for the utilities, "Do you have written testimony for the Consumer Counsel?" They all laughed and said, "Yes, we do." They got up and they picked up about four high stacks and dropped them in front of the Consumer Counsel, practically obliterating him from the people in the audience, and the Commissioner leaned over and said, "Make sure you have them read by tomorrow." The whole thing was a joke. That illustrates

> that there is no way that the People's Counsel can do the research. They do not care how many people he hires to compete with their numbers. They say a certain figure and you almost have to believe them. The engineers and people who work for the PUC are really no match for them either, so they get the People's Counsel caught into a quagmire. He works so hard, trying to catch them on this or that particular thing and it is all a waste of time. (David Truscoff, Conn., 11/18/75)

A second cause of poor access to information is confidentiality, both public and private:

> The Consumer Counsel tried to look at the books of some companies. They had considerable difficulty although they have been able to do it. The company claims that stockholders have the right to privacy and they claim that something that belongs to the stockholders, their books, are not open to the PC. The PUC has been able to examine the books of the companies who are asking for a rate increase. But there is some difficulty when they do that. (Charles Winn, R.I., 8/75)

> We set about to gather information and we tapped a graduate student from the university who had experience with the electric companies and with the TVA. He had supposedly classified information. He gave us information about their rate structure; they had special rates for big customers. This information just was not available to the public and still is not. (Peter Turcott, R.I., 11/19/75)

> We went through the stockholder books for the utilities and found politicians listed who did not even have sense enough to put in a blind trust. Great liberals get up and run out of the room, holding stock in the utilities...We cannot go to the bank and say "Give us the names of those people," because the bank does not have to do that. (David Truscoff, Conn., 11/18/75)

Many citizens interviewed feel the People's Counsel needed subpoena power to overcome these secrecy problems:

> I think at any time, he should be able to subpoena or request any documents from the utility companies. He claims he can, but he really can't because in so many of these areas they are protected by law. The People's Counsel should have the right to know who holds the stock of Northeast Utility. You cannot do that. The PUC cannot do that either. He should, in other words, be like an attorney general. He should be able to go into anti-trust matters and he can't. (David Truscoff, Conn., 11/18/75)

> He should certainly have the power to subpoena the books of any utility. And he should be able to get them even before they go before the Public Service Commission. (Clyde Jarvis, Montana, 4/21/75)

A third problem is timeliness: information often arrives too late to be of use to citizens:

> Very little information is ever published in the papers. The only time it's published in the papers is when you go get the increase, the day after it will be effective. (Dick Scapeli, Rhode Island, 11/19/75)

Political considerations were cited as a fourth major roadblock to information access.

One community leader says:

> We don't think that the consumer gets as much help as he might through any agency that has to be concerned with politics in any way, shape or form. It just can't be done. There are too many other considerations. They will tell you there aren't, but there are.
>
> It depends with whom you are talking. Joe Marciano is very responsive, He happens to be cooperative, and happens to like what we're doing, and he's a neat fellow. The same is true of Sister Arlene Violet at the Attorney General's office. I can't say that of everybody in the consumer division over there. It's true with any agency; there are some who will cooperate, and others who will not. (Activist, R.I., 11/19/75)

People's Counsels can provide little formal technical assistance to citizen intervenors, partially because of lack of resources. According to Alberta Slavin in Missouri:

> The Public Counsel just does not have anything in the budget to do much independent work. The legislature created them and then literally gave them no money. (Alberta Slavin, Utility Consumers Council, Mo., 9/17/75)

Access to Expert Assistance.

Utility regulation involves a host of disciplines -- accounting, economics, law, engineering, science -- virtually every category of technical study. To provide planning and engineering information in setting industry policy, however, the utility industry and utility commissions rely on a relatively small number of experts. For example, a directory of experts who serve as consultants for regulatory utility commissioners published by the National Association of Regulatory Utility Commissioners includes only thirty-eight entries who have been retained by public service commissions on electric utility questions. Of these, twenty are individual consultants.[1]

We find that the ability of citizen groups to tap this resource is almost non-existant. Citizens do not have adequate resources to meet the fee requirements set by the consultants, typically $500 or more per day, and most experts are unwilling to work for less. And even when citizen groups manage to raise sufficient funds, there is a problem of finding experts who will consult for consumer groups opposing a rate increase.

Our interviews surfaced dissatisfaction and frustration that citizens experience with their lack of access to expert witnesses. According to Brian Sullivan of The Connecticut Citizen Action Group:

> We are at a huge disadvantage trying to come up with a technical evaluation of the utility's reports. We are just no match for them whatsoever. There really can't be meaningful citizen participation in rate-making unless the citizens have access to technical expertise.

---

[1] "Directory of Consultants", National Association of Regulatory Utility Commissioners, Washington, D.C., 22 Sept. 1975.

> The problem is not an absence of the primary data; it is an absence of anyone who can make any sense out of it. We could get permission to go look at all the utilities books, but what good would that do? You would need a staff of ten accountants to try to do that. I don't think there is a problem of secret information, except that it is secret because people on the outside of the utilities do not have the skill to figure out what the information means. (Brian Sullivan, Conn., 11/17/75)

Dana Rupli, an attorney for Maryland's Organization for Consumer

Justice, Says:

> Special interests have had a lot of input in this area, the public has had very little. The public is just not informed. I say this objectively. I am one of the ten best versed people in the area of public utilities in the state and I am a novice. Utility issues are very complicated and are couched in terms that are not meant to be understood by the public. (Dan Rupli, Maryland, 3/26/75)

There are a great many problems in assembling an expert rate case.

Citizens view a major obstacle to be lack of financial resources:

> No one in New Jersey has the resources to get involved in a rate case. PIRG thought they did and found they didn't. So they didn't continue with it. (Bill Beren, N.J., 11/24/75)
>
> There is one guy who is a big Lifeline man who testified in California who was extremely effective. I understand the charge was $4,000. We don't have $400.
>
> Sometimes in an area which is controversial like nuclear power, you can pick up free expertise because scientists themselves have organized, like Critical Mass; but when it's something more mundane like utility regulation, you find that, sure there are experts, but you can't pay as well as the utilities. There's no way we can pay $5,000 for a three-day presentation of a rate expert the way utilities do. And that's also the way the public utility commission itself is ridiculously handicapped. They simply cannot perform as an active watchdog, even if they were really interested in being as firm a regulator as possible, they simply cannot match the utilities' expertise. (Brian Sullivan, Conn., 11/17/75)

But problems go far beyond lack of money. Another primary difficulty is that low fee or volunteer experts who consumer groups are forced to recruit as well as experts drawn from the "academic fringe" -- graduate students and experts outside their field -- do not understand the needs of their client. Brian Sullivan of the Connecticut Citizen Action Group:

> We have had only mixed success with experts. Basically, you pull them in on a one day basis, they don't know what is going on at the local level, or what the political situation is. Half of our experts are so offensive to legislators they talked to that we lost ground; half of them gained. one of them turned people off so entirely that we felt the whole battle was lost. He came across as a young punk. A lot of it is image. You are dealing with a set of legislators who have their own personalities, and they are insulted by certain kinds of people and turned off by others. If you want to be effective, you have to mold your presentation to fit what they are looking for, even if it's repulsive. He did not succeed in doing that.
>
> The only thing that helped on the nuclear power issue, was that Professor Kendall came down from MIT, and was great and very effective. He came down, taking very conservative approaches to things, not rushing into any statements: "I am here, I am very concerned," and they could identify and it was effective.
>
> Another witness talked about utility rate restructuring. That was another disaster. He bored the legislators. They thought he was a dope. They thought he was making stupid analogies and talking down to them. We have had mixed success. The problem is, what do we know about these people before they come?
>
> You cannot get the national figures here for more than an hour before they testify. You sit down with them in a room and try to talk with them about the facts of life. Think of all the degrees of sophistication in which you could have a legislator. You could have a committee that never heard of nuclear power or people who are already right with you, who don't really want to hear the rhetoric. Or they could be middle-of-the-road.
>
> When you pull someone in from another state and sit them down, it won't work if they don't care to take a look at what the context is. What we learned is that simple. The more preparation we have, the better the witness. It is not a question of bringing their technical influence down here. It is telling them what the political status quo is. (Brian Sullivan, Conn., 11/17/75)

Many citizens interviewed hold a dim view of the objectivity of some technical consultants. George Vlasts of the Baltimore Coalition to Stop

Unemployment and Inflation says:

> I am not one for expert witnesses. You know, the expert witnesses, they'll say anything they are paid to say. Whoever has the most money, which is why the gas companies always get better expert witnesses, and more expert witnesses because they've got more money. But you know that is what the People's Counsel is set up to do, and I guess there is some role for that. (George Vlasts, Md., 8/6/75)

Most consultants have established practices of consulting for the same utilities and commissions on the same issues. They thus develop a consistent point of view with regard to accounting procedures, pricing policy, engineering design standards or whatever their specific area of expertise is concerned with. The firms thus provide similar kinds of services on similar questions to utility companies and commissions that operate with essentially similar procedures.

As we shall discuss below, issues raised by citizen intervenors include non-traditional views that often contrast or conflict with existing policy and practice. For a consulting firm to provide service to citizen organizations in these areas would require the firm to develop new areas of expertise and new methodologies: new econometric models, new computer programs, new contacts with a different network of energy resource and equipment manufacturing firms, new relationships with a different set of state and federal regulatory officials. Program development of this type requires additional expenditure of capital for which most firms would find little economic incentive if they already have ample business from their present clients. Since citizen organizations tend to be ad-hoc and non-permanent, it does not pay for an established consulting firm to provide such non-traditional services to organizations which may never employ them again. Consultants also tend to be sensitive to the policies of their major customers and naturally tend to maintain good working relationships with their client.

In short, the dynamics of how expert information is developed favors maintenance of existing utility practices and policies. These dynamics provide an intrinsic barrier to participation by citizens (as well as to People's Counsels) who attempt to influence utility rate policy in non-traditional areas.

National assistance groups were mentioned several times as providing expert assistance:

> We talked a little with the Community Action Program in Boston. I read some of the magazines put out in Washington... They were the ones who talked about Lifeline in California. I try to follow up on things. The Movement for Economic Justice is probably the only direct contact with which we have been in touch on a regular basis. (Henry Shelton, R.I., 7/21/75)

Virtually all citizens interviewed relied heavily on the People's Counsel to conduct a legal technical intervention for them. This is a major benefit of a People's Counsel as seen by citizen groups. Ed Lloyd of N.J. Public Interest Group states that the People's Counsels have more resources than do citizens.

> We sit down and plan strategy for the next rate case. We don't have the resources to get involved in a rate case again so we would like to have our input through the rate council. I think that perhaps our very good relations with the Division of Public Interest Advocacy and the fact that we are beginning to develop a relation with the public advocate himself will help us to have some input on what they do with the next case. (Ed Lloyd, N.J., 8/6/75)

Claire Schiff of New Jersey states:

> We have a symbiotic relationship with the People's Counsel. I don't think that you can have the expertise because the citizens don't have adequate funding. You know, the Consumer's League is a shoe string operation. Let's face it. So is PIRG, and they couldn't possibly have people of that professional level of expertise who are going to remain in it for the remainder of their careers.
>
> For the most part, the People's Counsel can provide the technical arguments through their lawyer or by bringing in experts. (Claire Schiff, N.J., 7/18/75)

Lack of expert assistance is thus a major impediment to effective public participation, which People's Counsels partially remedy.

People's Counsels and Technical Assistance

We found that few People's Counsels have developed adequate formal mechanisms for providing information to citizen groups. Information on dates and places of public hearings, on technical questions and on political issues is not systematically distributed by People's Counsels. For many People's Counsels the only arrangement to supply information is a commitment to answer consumer inquiries as best they can with existing staff.

We found several exceptions. In the District of Columbia, the People's Counsel issues a monthly newsletter, "Utility Line" that provides schedules of upcoming hearings, news of results from past hearings, short descriptions of technical issues being considered, and profiles of local citizen activists. Maryland has also begun to distribute a "Utility Consumers Newsletter".

While most citizen groups we interviewed welcome newsletters, workshops and other formal information tools, few have pressed to have them instituted. The groups are much more interested in developing working relationships with decision-makers and others "inside" the utilities or regulatory agencies whom the citizens could tap to help them be more effective in achieving their goals.

For many groups, the People's Counsel himself serves this insider function; for others, disgruntled utility employees are important. Whatever the source, most groups consider the "insider" to be crucial:

> What's the best way to get information? Certainly talk to the employees. How else could you get it, really? (Mike Valenti, Conn. 12/30/75)
>
> We call the utility company, we talk with the person who's specifically in charge of billing. They know who we are, we have good rapport with practically everybody. We explain the situation and ask for information from them so we get both sides of the story first, so we don't go off on a limb without knowing what we're doing.
>
> After nine years, it's understandable that we have friends in various agencies who will be very confidential and tell us any things that the public doesn't really know. They give us information on what can be done, what their frustrations are, the reasons for those frustrations. We get tips from various people in those agencies whose names I can't mention because obviously their jobs would be in jeopardy. That has been invaluable because we know we're not to waste time. (Community leader, Rhode Island, 11/19/75)

What insiders have to offer is an explanation of complex technical information which the layman cannot decipher, and, most important, valuable advice on what the best strategy might be in any given situation:

> There are very few people who don't have a college education that can take one of the applications and understand it. To me it's like pound cake now because their engineer showed me how to do it, not because I know how to do it, but because I gained the confidence of their employee. (Mike Valenti, Conn., 11/21/75)

> You always need an inside person. At least he can tell us when the meeting is going to be held and what room it is going to be in. And what the issues are and what the personalities are like and where they are coming from and who is on the fence. As well as some of the other facts and papers and information which is coming down the pike and skeletons and gossip. (Julius Newman, Conn., 11/18/75)

> One assistant advised me on testimony I should present concerning advertising regulations for utility companies. I followed his suggestions and he thought that the testimony that was presented was profitable and what he had in mind. (Carolyn Barker, Ind., 7/23/75)

Without the strategic insider, citizens have serious complaints about gaining access to official information.

> We were naive. We wanted to do something...we wanted to handle all kinds of consumer problems to try to be a rallying point. The electric issue was really our baptismal fire. We wanted that to teach us the lessons. We felt we could learn the sources of information we could tap. We found out that the sources of information are very reluctant to be tapped. Yes, the PC did give me literature. He was very nice, but we never heard from him again. They wanted to handle it themselves. (Dick Scapeli, R.I., 11/19/75)

> Q. Are they usually pretty good about giving you information?

> A. If you get the right person. If you get somebody who doesn't have the willingness to check through the files or who would rather give you a wrong answer than get up and find out, or who just doesn't know. (Ruth Altman, R.I., 11/19/75)

> We went to the Public Utility Commission and asked for literature on this. One of them gave us the runaround. They wanted a dollar a page for copies. We finally found a sympathetic ear there. (Peter Turcott, R.I.. 11/19/75)

> It was the good grace of the Commission that would make accounting records and things which are not available to us as intervenors available to the public counsel -- as I say through the good graces of the Commission. (Alberta Slavin, O., 9/17/75)

> He was supposed to present his testimony on that date and we were also supposed to argue our oral argument to get in. He would never send us copies of his witness testimony. He acted as though it were something secret. We asked him about 3 or 4 days ahead of time. "As soon as you've got it drafted, let's see what you've got," but he declined to do so In fact, I don't think we got copies of it until we went up there that Friday morning. (John Schell, D.C., 4/4/75)

The legal-technical nature of utility proceedings combined with limited access to the information and expertise necessary to participate strongly inhibits citizen involvement. People's Counsels are a partial remedy in that these state officials have the required technical competence to present a consumer point of view into the proceedings.

b. DEFINING THE PUBLIC INTEREST

Non-traditional concerns of citizen groups

Utilities and their regulatory agencies often operate under procedures established for conditions that existed before electric rates began to increase rapidly. In the past, utilities achieved more efficiency in generating greater amounts of electricity. After the mid-1960's, however, increased construction and fuel costs caused economies of scale to reverse themselves. Increased electrical usage costs more to generate per kilowatt hour instead of less. But declining block rates are still the prevailing rate structure in the nation's utilities.

The prevailing view among citizen groups is that utilities could respond to increased demand for electricity by eliminating promotional rates and instituting increasing rates per kilowatt hour used. Since the rate of return on utility investments is set by Public Service Commissions as a percentage of the companies' rate base (that amount of capital the company has invested in its generating plants, lines and other equipment) citizen groups see an incentive for utilities to meet increased demand by building new plants. More often than not, Public Service Commissions have approved this course of action.

Citizen groups have argued for a number of innovative measures to alter the promotional rate structure:

Peak load pricing -- differential rates whereby a customer pays more for electricity used during heavy or peak periods:

Lifeline -- reduced rates for the first 300-500 kilowatt hours with increased charges as power use increases;

Flat rates -- the same rate for any amount of power used;

Inverted rates -- increased charges as power use increases; Cessation of promotional and institutional advertising that promotes the use of electricity;

Long-run incremental cost pricing - - rates set to charge for electricity according to the incremental cost of adding new capacity, rather than the average cost of power from lower-priced existing plants.

In Washington, D.C. for an example of non-traditional approach of citizens, Robert F. Meuller, a scientist working with local citizens prepared a list of alternatives to a proposed nuclear plant in the area. His list included conservation, changes in home heating techniques, rate restructuring and so forth. The Public Service Commission had little statutory authority in many of the areas he discussed, and could do little to act on his recommendations. The alternatives, if implemented, would take the cooperation of a number of agencies, many of which do not ordinarily coordinate their activities. As a result, Mueller's report [1] did succeed in introducing new insights into the local debate over energy usage, but did not succeed in directly altering utility practice.

Thus they can serve as a conservative force. Many issues of concern to citizen intervenors have not been traditionally dealt with in rate hearings: energy conservation, innovative rate structures, consumer billing practices. Since conservation, rate inequity and so forth are recent concerns, regulatory agencies with long-established procedures can respond only by a difficult change of outlook and procedure. This dynamic provides an intrinsic barrier to participation by citizens who attempt to influence utility policy in non-traditional areas.

What is the Public Interest?

Citizen groups involved in utility rate hearings are concerned with a plethora of issues, ranging from the very technical to the very political. Since on any one utility issue citizens rarely all agree, defining the "public interest" is difficult. On issues we have examined, however, we find that the public interest is neither the extreme of a simple-minded mass mentality nor a hopeless tangle of competing and opposing interests.

On the need to curtail spiraling electricity costs, for example, citizen groups almost unanimously agree and the public interest here is clear. How much curtailment is often debated, with some groups asking for a zero increase and others asking only for a marginal cut, but usually there is consensus that rates should not rise so rapidly.

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[1] "Energy Conservation Alternatives to Nuclear Power" 1973 Available from Dr. Robert Mueller, Goddard Space Flight Center, Greenbelt, MD 20771, or from Environmental Action Foundation, Washington, D.C.

On rate reform, utility ownership policy and other questions, citizen opinion is rarely so sharply focused. Most groups agree that the rate structure itself needs reform. They agree less on what kind of structure reforms are needed. Two such reforms, "Lifeline" and "peak load pricing" have perhpas been the most controversial. Lifeline proponents argue that small users should receive discounts through a Lifeline rate that would provide a certain necessary amount of electricity (usually 300 to 500 kilowatt hours per month) available to all at a reduced rate, with large users being charged more. Those who argue for peak load pricing claim that charging more for electricity used during the peak load periods would discourage excessive use, and would cut down on the need for new generating capacity.

Lifeline proponents do not necessarily support peak load pricing nor do peak load pricing proponents necessarily support Lifeline. Some Lifeline proponents argue that peak load pricing is regressive since it would raise electric rates during early evening hours when lower middle income working people return from their jobs and prepare the evening meal. I t would also mean higher prices for all peak users even though it is the users whose use is growing who are primarily responsible for the higher costs that result when new plants have to be built.[1]

On the other hand, some peak load pricing proponents argue that Lifeline is not a "pay as you go" pricing mechanism and would lead to economic inefficiencies. The point here is that, whatever disagreements there are between these two groups, however, they basically agree that rates need to be altered and that large electric users should not received subsidies in the form of declining prices for increasing usage.

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[1] Just Economics, Movement for Economic Justice, Washington, D.C. 1975, p. 6.
December, 1975, p.6

Beyond the rate structure reform issue, quite a bit of difference of opinion exists among citizen groups over who should properly own electric generating facilities. Traditionally these facilities have been owned by the private sector (investor-owned utilities), but a number of publicly owned systems have operated successfully for some time and a number of municipalities have recently taken over ownership of private facilities. Some community groups feel that as long as utilities are in private hands, utility rates will be set more to meet corporate goals rather than to meet community needs. Others feel that if government takes over, utilities will become inefficient bureaucracies more inaccessible than any private utility is now. Even though there is disagreement over the ownership question, however, citizen groups active in utility issues agree that ownership and public accountability of utilities need more attention as a policy issue than they now receive.

A superficial survey of citizen opinion might erroneously indicate that all citizen groups can agree on is lower rates or that active citizen opinion is widely divergent. We find that within the range of opinion on any issue there can usually be found basic agreement on significant aspects of the question.

Who defines the Public Interest?

The majority of citizen leaders we interviewed believe that the People's Counsel in their state is effective in keeping rates down. But while citizen groups agree with the People's Counsels on some issues, most People's Counsels experienced a certain amount of conflict with existing citizen groups.

The most common complaint from those interviewed is that People's Counsels tend to gloss over differences among citizen groups and to lump them together into one undifferentiated mass. Two attorneys for citizens' groups in Maryland put it this way:

> I think from what I have seem that there is no question that the People's Counsels are probably motivated as far as keeping rates low, if that is all the People's Counsel is supposed to do. They are very sensitive to the impact on the consumer of different rate structures and rate increases. Their briefs indicate this, their testimonies indicate this. But they are not at all sympathetic to the diversity of interests among consumers. The people's counsel does not seem to understand that. Consumers are not a monolithic, undifferentiated mass. We are quite different, and have different interests. (John Schell, Md., 4/4/75)

> The People's Counsel's mandate ought to be more narrowly defined so that they would represent by law that segment of the community that represents small business and residential users only. You could call it the consumer guild or something. And more or less restrict their activity to that part of the public. In other words, do not pretend that you are representing the entire public. That is fallacious, it does not mean anything. The "public interest" does not mean anything either. The ITT interest is not that of an old lady on Social Security. They are both the public but they have different needs. (Dan Rupli, Md., 3/26/75)

Many citizen groups feel that the People's Counsel do not tackle issues considered important by the groups. A lobbyist for a conservation group in New Jersey reports that his group and several other public groups:

> wanted the commission to look at the demand structure for public service, to check on whether their demands were accurate or not, to question Public Service, Electric and Gas company's total reliance on nuclear energy and whether that is the most economic or most efficient way of providing energy. And we talked with the Public Utilities Commission about getting involved in looking at alternative forms of energy supply and energy conservation as alternatives to nuclear plant construction.
>
> The Public Utility Commission has traditionally avoided interposing itself into the day-to-day decisions of what to build and where, instead of just seeing that the company was not unduly ripping off the public.
>
> This is a head in the sand type approach. We can do nothing about sky-rocketing utility rates until we control the reason for the rate hike. There are consumer issued which the New Jersey Rate Counsel has not been particularly receptive to. I have the feeling that they are Rate Counsel lawyers who are assigned a political job to represent the consumers. Their position is as much to protect the stockholders of the company as to protect the consumers. They do not reflect any of the concerns that interest us. (Bill Beren, N.J., 11/24/75)

Leaving aside the important problem of an adequate budget to handle disparate issues, we found three factors repeatedly mentioned by citizen groups and by People's Counsels that contribute to conflict over defining the public interest: lack of awareness by the people's counsel of citizen interests, ideological differences between the two, and political considerations.

The concept of Lifeline privides an example of a non-traditional citizen approach to electric rate restructuring and how lack of awareness and ideological differences produce conflict. The concept of Lifeline was originated by the Vermont Public Interest Research Group, one of the student-sponsored public interest groups sparked by Ralph Nader. Lifeline was originally designed as a conservation measure;

since large users would have to pay more per kilowatt hour, they would be encouraged to cut back usage. Citizen action groups across the country quickly adopted the idea and broadened its applicability to low-income customers. Under Lifeline, a residential customer would get a very low rate on that amount of electricity or gas that was considered absolutely necessary, that is, for light and hot water, but not for air-conditioning or other larger electrical uses. The concept of Lifeline has now become so widespread that, more often than not, we found it to be a goal of the majority of community-based citizen organizations. Several Lifeline bills have been introduced into the U.S. House of Representatives.[1]

A chronic difficulty expressed by citizen groups with People's Counsels was a lack of knowledge by the latter about the wants and goals of the groups. As we discussed above, we found several People's Counsels who assumed that citizen groups want only one thing: lower rates. These People's Counsels were unaware that other issues are being contested by citizen groups. For example, in Montana, the Consumer Counsel stated to us that the reason he had not taken up Lifeline as an issue was that no one was interested in it, only in "my rates are too high." But even before our interviews took place, a broad coalition of labor, Indian groups, consumer and environmental organizations had prepared a lengthy document arguing for rate reform that centered around the Lifeline proposal.[1]

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[1] The Washington Post, 2 January 1976

A New Jersey attorney retained by that state's Rate Counsel felt that citizens are interested only in their own pocketbooks:

> I have some difficulties with citizens representing alternatives because you find that citizens' groups, although they comment as groups, when you talk to individuals, members, they are more concerned with themselves. In other words, they look at their bill and say, "I use 600 kilowatt hours per month." If you make a proposal that rates should be cheaper for those who use 500 kwh or less, that individual would say it should be 600 kwh or less. You say, "Why?" and he would say, "Well, that is what I use." (John Hoffman, N.J., 11/29/75)

Some People's Counsels had in fact given quite a bit of thought to the Lifeline issue and were obviously well-versed about it when we discussed it with them. In some areas the People's Counsels were aware that there was a substantial sentiment for a Lifeline rate, yet none supported it and most opposed it. The reason given was most often an ideological difference with the concept.

In the District of Columbia, for example, the People's Counsel conducted a survey of utility customers to ask if they wanted a Lifeline structure applied to their rates; 64 percent were in favor. When citizen groups succeeded in having a Lifeline proposal introduced into the District's City Council, the People's Counsel, while not outwardly opposing it, recommended an alternative energy stamp program.[2] Many community groups in the District felt that energy stamps were an inadequate answer to encourage conservation of energy even though they might aid low-income families. Moreover, the groups believe that support of energy stamps is adhering to the industry point of view which supports energy stamps rather than Lifeline.[1]

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[1] "Power Line", Environmental Action Foundation, Washington, D.C., October 1975

[2] "Utility Line", Vol. 1, No. 4, D.C. People's Counsel

When we interviewed the District of Columbia PC, she responded that she did not believe in Lifeline:

> I am not going to get the citizen groups to like me by telling them I support something I don't believe in.

In her confirmation hearing, the People's Counsel said that if there was a conflict of interest, she would decide which issue to represent and hope that,

> There would be some other attorneys who would bring those cases in as intervenors. My judgment would necessarily be based on different factual issues. I would have to rely on whatever economists can show me would effect the best economics and the best service for the people.[2]

New Jersey's Rate Counsel reiterates the point:

> I think we should be accountable to our ideals. I think that if we believe that some things have to be done, we ought to be accountable to that.
>
> The rate should reflect the cost of the service and as soon as you start giving favored treatment to one group of customers you are subsidizing that group by adding what the other customers have to pay. (William Gural, N.J., 11/25/75)

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[1] New York Times, 27 April 1975

[2] District of Columbia Public Service Commission, Committee of the Whole Hearing on Confirmation of Mayoral Nomination of the People's Counsel, 5 March 1975, p. 26.

A difficulty in these cases is that theoretical underpinnings for any one particular rate structure are weak at best. No rate structure is the "correct" structure. The decision as to which structure to advocate is left to the judgment of the People's Counsel. In the case of Lifeline, the judgment of the People's Counsel has run counter to the wishes of sizeable citizen constituencies.

Political factors play a significant role in creating conflict between People's Counsels and citizens. Since there is rarely controversy over whether or not citizens want lower rates, People's Counsels can adopt this issue with little need to justify their action. If they take up Lifeline or some similar reform, they have to go about the business of weighing different interests and resolving conflicts. This involves an enormous amount of skill and work.

Political pressures were cited by several citizens as producing a low-key People's Counsel that played the role of an "insider":

> If you work within the system, then you play the game by all the existing rules and you attempt to get gains by doing that. If you feel you are always willing to play by those rules, there are conflicts between the two. How charming do you want to be with state legislators and what do you want to give up? What trade-offs are you going to make? These kinds of considerations are more important.
>
> Given the fact that he is one person with very limited resources, I think the best approach he could have taken was kind of the "insider" approach and he has been extremely effective at it. (Brian Sullivan, Conn., 11/17/75)

Working as an "insider" would lead People's Counsels to believe that it is easier to be effective on "traditional" issues. In the politically unstable People's Counsel offices, effectiveness is important to establish the role of the office. According to the D.C. People's Counsel:

> A lawyer's role, while it is one of advocacy and while it is

> one of pressing forward toward his client's ultimate objectives or those things which his client wants for himself and which are in his best interests, you must also be a very sensible person.
>
> You cannot fool-hardily push into areas or issues which are not going to recoup you anything or which are going to operate to your detriment. To that extent you have to be sensible enough to recognize that.
>
> One of the things that comes through negotiation is the ability to recognize what you can reasonably expect to accomplish, how you can push ahead and accomplish that, what things are expendable so that you can go ahead and get what you really want. (Annice Wagner, D.C., 3/5/75)

Certainly no People's Counsel merely follows the political whims surrounding them, and many, especially in Connecticut, New Jersey (the Division of Public Interest Advocacy) and Rhode Island have taken up some citizen issues that are not politically popular. But insufficient budgets, lack of solicitation of citizen views, ideological differences, and political factors hinder citizen groups from having their views advocated by the People's Counsels. Perhaps lack of solicitation of citizen views is the factor most easily remedied and it is this we discuss in the next section.

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[1] District of Columbia Public Service Commission, Committee of the Whole Hearing on Confirmation of Mayoral Nomination of the People's Counsel, 5 March 1975, p.26.

c. ACCOUNTABILITY

Statutory Definitions

The concept of a People's Counsel, as it is viewed in the eleven states which have such offices, is that of introducing consumer input into utility rate hearings.

Who determines which course of action the People's Counsel should follow? In the normal attorney-client relationship, accountability is more defined; in essence, according to the American Bar Association Code of Ethics (Code EC 7-7), the attorney is the agent of the client, and the client makes the final determination of what actions the agent will take. No clear definition exists for offices of the People's Counsel. What statutory language exists is vague and appears to have little effect on the conduct of the People's Counsel.

Except in New Jersey, statutes offer only generalities to guide the People's Counsel in deciphering who is "the public" and what is or is not in "the public interest." The People's Counsels are charged to "represent the public" or to "appear on behalf of rate payers, patrons and the public." Little more is said. Connecticut's statute mandates that the "counsel shall have demonstrated a commitment to safeguarding the rights of the public" and then goes on to define a consumer as "any person, company, corporation, association, city borough or town, that receives services, either directly or indirectly, from any public service company in this state."[1] This definition is all inclusive. Florida and Maryland specify that the general public is the appropriate client but says nothing about determining what is in the general public's interest.

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[1] Connecticut Substitute Senate Bill No. 1081, Section 11f. Jan. 1975.

Only New Jersey defines the public interest and even there the statute is broad:[1]

> Public Interest defined: As used in this act, public interest shall mean an interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens.
>
> The decision to represent any particular interest is left to the Public Advocate: The Public Advocate shall have sole descretion to represent or refrain from representing the the public interest in any proceeding. He shall consider in exercising his discretion the importance and the extent of the public interest involved and whether that interest would be adequately represented without the action of the department.

The latter section indicates the desire of the legislature to provide representation for the under-represented and would probably rule out large corporations or the non-indigent. The statute goes on to prescribe what action should be taken in cases where there is a conflict among different sectors of the public:[2]

> If the Public Advocate determines that there are inconsistent public interests involved in a particular matter, he may choose to represent one such interest based on the considerations in this section, to represent no interest in that matter, or to represent one such interest through the Division of Public Interest Advocacy and another or others through other divisions of the department or through outside counsel engaged on a case basis.

Just as most states provide little explicit definition of who the public is, they give little indication in legislation about how to determine what interests the public wants represented. Only Montana requires the People's Counsel to meet with members or representatives of the consuming public. The law leaves up to his discretion how often and where the meetings should take place. The District of Columbia provides discretionary authority to the People's Counsel to meet with the public for the purpose of "public information, dissemination, consultative services and technical assistance."[1]

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[1] Department of the Public Advocate, Act of 1974, Assembly No. 1409, Chapter 27, Art. IV, Sec. 31 and 32

[2] Ibid., Sec. 32

For all practical purposes, State law remains silent on defining who the public is and how to determine where its interests lie. People's Counsel are essentially free to rely on their own personal judgment when setting their priorities. Accountability to the public is thus at the discretion of the People's Counsel.

Connecticut's Consumer Counsel described his process for setting case priorities as follows:

> Obviously this office has had to pick and choose the cases in which to participate - which cases to enter are left totally up to the discretion of the Consumer Counsel. The particular position that is chosen in particular cases depends for the part on what I perceive the public interest to be. While I certainly recognize the pitfalls of such a decision-making process, I have not yet thought of a better way of making decisions regarding this matter. I do attempt where possible to talk to consumer groups in an attempt to get their views on particular matters. However, since these groups often disagree between themselves, this is at best an advisory situation.
>
> The allocation of resources then, is not strictly on a first come, first served, basis but rather my definition of the public interest, however biased or slanted that may be.[1]

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[1] David Silverstone, Conn., communication to Center for Science in the Public Interest, 29 July 1975, from attached information sheet, 6 June 1975

When asked what influences his perceptions, Mr. Silverstone replied:

> Representatives and political people call me and tell me what the situation is. . . what their constitutentents are up in arms over. That is pretty much how I gauge it. (David Silverstone, Conn., 11/17/75)

Our examination indicated that statutes creating the offices provide more the image than the reality of citizen representation and participation. The law does not define explicitly the relationship between People's Counsels and citizens. This vagueness has hindered public participation by creating false expectations which erode the trust between citizens and officials.

Procedures for Solicitation of Citizen Input

Virtually all citizens groups we interviewed said that it was up to them to make contact with the People's Counsel. There are few procedures to solicit their views on setting the People's Counsel's priorities. According to Carolyn Barker in Indiana:

> Most people are not even aware that there is such a thing as a People's Counsel. They would not know what relationship they were supposed to have with them if they knew about it.
>
> The Public Counselor office here never really comes forth to offer any assistance. We have to contact them and they don't seem too interested in actively or aggressively soliciting consumer opinions about it. If you happen to show up or contact them, OK, but if not, I do not think they are going out looking for people.(Carolyn Barker, 7/23/75)

Of course citizens can intervene in rate commission proceedings or testify at public hearings, but citizens groups agreed with Brian Sullivan in Connecticut who feels that these are superficial "one shot" opportunities:

> The Public Utilities Commission has given citizens the opportunity to come in and testify on a one shot basis, as on the opening day of hearings, or once in a while they will go around the state to hear comments with regard to a rate case. But that is not the same as having citizens intimately involved in the rate case itself and really following it. Getting their views across is one thing, to have public hearings where citizens vent their anger about how high their electric bills are, and how the utility double crossed them by selling them electric heat and then charging a thousand dollars or more for heating. It is another thing to have a citizens group actively involved in a rate case, cross examining witnesses and preparing concrete alternatives and that type of thing.(Brian Sullivan, Conn., 11/17/75)

In the absence of a clear mandate to solicit citizen input People's Counsels have little incentive to put a major effort into this activity. Several People's Counsel attorneys said they thought it was important to solicit citizen opinion and participation more actively but that their lack of sufficient funds and other resources prevented them from dealing more directly with citizen groups. They indicated that if the funds were available they would develop such programs.

Besides budget constraints a variety of factors make People's Counsels reluctant to actively and publicly seek out input on rate hearings. First of all, to solicit citizen views means the People's Counsel has to go about the business of weighing different interests and resolving conflicts. This involves an enormous amount of skill and work. According to Brian Sullivan in Connecticut:

> The People's Counsel does not really want that kind of citizen input. He does not want to be hassled by people while he is going about his business. For instance, they are doing peak load pricing study and the Federal Energy Administration required that there be some citizen input into it. There was some disagreement over the fact that there would be a citizen advisory panel on the study. Even though we were named to it by the Federal Energy Administration, I don't think we have been contacted at all.

> It is almost too difficult to "bring citizens into the the process." (Brian Sullivan, Conn., 11/17/75)

Most citizen groups agreed that their People's Counsel

> Is probably satisfied that he represents citizens and is satisfied working at that. He is appointed as a citizens' consumer counsel to look after their interests and he will do so to the best of his ability. (Brian Sullivan, Conn., 11/17/75)

Several People's Counsels cited political problems in dealing with citizen groups:

> The courts here are very conservative and view the consumer movement with a jaundiced eye. The people I have are well known personally to the judges and we do enjoy a professional reputation. Personally at this time I am not going to foul that up by sending releases and acting like a self serving politician. We are available and will go out if anyone wants help. We wait for someone to complain. (Geoffrey Brazier, Montana, 12/9/75)

According to Connecticut's Marc Caplan, an aggressive citizen participation program

> Would really arouse the utility companies and it would even probably arouse the legislators. Maybe the People's Counsel feels that he should get himself in a very secure position first of all. So far, he has not been in that position. (Marc Caplan, Conn., 4/21/75)

Virtually all citizens we interviewed felt that this caution encourages People's Counsels to eschew citizen input. The People's Counsels interviewed place more emphasis on presenting a powerful legal and technical case than they do on organizing members of the community or building a citizen constituency. They stress obtaining lower rates rather than discerning and advocating citizen wants and needs.

> The greatest tool consumer advocates or anyone has is ad-administrative proceedings, the discovery tool, take depositions and interrogations. (Geoffry Brazier, MT.,12/9/75)

Citizens views are not easily presented in courtroom argument and this fact would seem to limit the People's Counsel's field of activity, especially if the People's Counsel is worried that by close association with citizens groups he is "going to lose credibility" with the Public Service Company Commissioners.

Two People's Counsels indicated that citizen input would be welcome by the utilities if it were "objective." When asked what type of citizens could make valuable input, Rhode Island's Consumer Council Executive Director listed:

> Professional people, technical experts in planning, someone familiar with energy and utilities . . . a blue ribbon commission. You would look for people who would have the ability to make a contribution in this area. (Edwin Palumbo, R.I., 12/30/75)

One attorney interviewed believed that more active solicitation of citizen participaton would amount to "ambulance chasing" and hence would be unethical under the lawyer's code of ethics. While this interpretation of the ethical code is somewhat extreme it represents a cautious attitude apparent in the actions of many of the People's Counsels. People's Counsel offices are not yet stable; they are new offices and their budgets are small, they are political appointees whose jobs and very positions can often be abolished at will, and they operate in a controversial area. Actively soliciting citizen input could rub a raw wound for other state officials and for the utility companies.

The citizens we interviewed all agree with the position that "the more direct citizen input you get the better", and most feel there is a need for staff members within the People's Counsel Office who could serve as community liaisons who might organize citizen input into rate cases:

> If they really are going to represent consumer groups, they need to establish liaisons all over the state, between them and consumer advocates, people who are really working and interested in rate cases and other utility cases and actively soliciting opinions and finding out what their problems are and what they want done. (Carolyn Barber, Indiana, 7/23/75)

> I would want to hire a lot of lawyers to go out and work with groups and to inform them. It would be more of an outreach function. The only way the average citizen is going to be able to have any say in his own affairs with utilities is to have a government agency that is well funded that can take on these issues, no matter how big or small, and will serve as the organizer. (John Schell, Maryland, 4/4/75)

A major difference between citizens' and People's Counsels' views is that People Counsels for the most part prefer to represent citizens' views as the officials see them while citizens prefer to have People's Counsels help consumers advocate their own points of view. We will return to this point below in the discussion of direct citizen participation.

Citizen Input Into Selection of People's Counsel

Except for the District of Columbia and New York, no states have formal hearings, citizens councils, or other formal procedures for soliciting citizen suggestions and input on selection of the People's Counsel. One common sense approach to building citizen trust in a People's Counsel would be to invite input from those who will have a deal with the counselor once he or she is in office. The absence of such invitation can contribute to mistrust of their official advocates by citizen groups.

In Connecticut, a non-typical example of how People's Counsels are appointed, expedience produced by the energy crisis and the political sensitivity of the utility issue were strong factors in the selection of the People's Counsel -- stronger factors actually than was citizen input.

The legislation that established the Office of Consumer Counsel in Connecticut was part of a larger bill that also authorized an automatic fuel cost adjustment for the state. The state's Office of Consumer Counsel was appended to the bill as a last minute compromise to soften the impact on consumers of price increases that would result from the automatic cost adjustments. One citizen made explicit the skepticism over the office implied by several community leaders:

> In April, the Fuel Cost Adjustment Bill was being debated in the Senate and Northeast Utilities (a holding company) was also asked for a 15.9 percent rate increase to be added to the fuel cast adjustment. On Thursday, May 2, the bill had already cleared the Senate and was scheduled onto the floor of the House the last day of the session.
>
> More than thirty members of the Assembly ran from the room rather than vote against their enraged constitutents before an election or against the power utility companies who controlled the party chairman. The bill breezed through with thirty-three members not voting. It was an act of pure political cowardice. The bill was supposed to be made digestible for the voters by adding to the expanded Public Utilities Commission a consumer counsel to represent the people - a watchdog to watch the watchdog. (David Truscoff, Conn., 11/18/75)

The Consumer Counsel, a former legal services attorney in Danbury obtained the position by responding to a notice of a job opening circulated among state offices and then proceeding through a standard interview process. Citizen groups interviewed in the state said that they had no input into his selection or into the legislation that created his office.

In December, 1975 the Governor conducted a strenuous belt-tightening campaign to reduce state expenditures. Both the Consumer Counsel and citizen groups expressed concern that the Consumer Counsel office would be seriously cut back. Again, citizens said that their input was neither solicited nor utilized.

Community groups in the District of Colmbia and New York had at least a formal opportunity to influence the selection of their People's Counsel. Legislation creating the office requires a confirmation hearing before the City Council in D.C. and the Senate in New York,citizens may testify at these open hearings.

As in Connecticut, expediency was an important factor in the appointment of the District's People's Counsel. In late December 1974, the local power company requested from the Public Service Commission a 23 percent rate increase for its D.C. customers. A prehearing conference was set for early March, 1975.

On January 2, 1975, meanwhile, Congress had passed into law a bill (now P.L. 93-614) to establish an Office of People's Counsel within the Public Service Commission. In mid-February, a coalition of 32 community groups requested "that the PSC hearings be postponed until a

People's Counsel has been appointed and has had time to prepare a thorough case and has had the chance to meet with citizen groups."[1] The groups held a meeting with the Mayor at which he promised to appoint a People's Counsel quickly and to request that the March conference be postponed until the appointment was made.

First choice of many of the community groups for the People's Counsel appointment was a Congressional aide who was sympathetic to many of the groups and whom many of the groups knew personally. The Mayor passed over this candidate and nominated Annice Wagner, an attorney whom few citizen groups active in the electric case knew. She met with a cautious reception from the groups who expressed disappointment "in her lack of credentials."[2] They also questioned her knowledge of and commitment to consumer problems.[3]

At the request of the citizen groups the nominee met several times to hear their views on rate issues. The meetings were rather contentious with both sides cautiously testing each other. Communications were still not very smooth when the City Council confirmation hearings began. Several citizens expressed a persistent lack of trust:

> We wish to stress that the critical task facing this Council is to assure that the ordinary citizen has a voice in determining utility rates . . . We feel that the establishment of the People's Counsel is a step forward in assuring that goal.

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[1] Press Release of D.C. Power, 14 Feb. 1975

[2] Washington Post, 20 Feb. 1975

[3] Washington Post, 25 Feb. 1975

> We hope that we are not seeing here a classic case of Mrs. Wagner measuring words in view of her intended audience. For last night when representatives of community groups met with Mrs. Wagner we got different answers to the questions that the Council members asked this morning. Today, Mrs. Wagner stressed flexibility and innovation. Last night Mrs. Wagner stressed that she would be somewhat inflexible because of the legal requirements she reads into the statues.
>
> We share the Councilmen's reservations about Mrs. Wagners prior experience as a compromiser as opposed to a staunch advocate.
>
> We have noted Mrs. Wagner has had no experience in the consumer movement and she is not aware of and could not identify a large number of advocacy groups in the city. The groups therefore midly oppose her confirmation. We could be wrong and maybe she could see the light and become one of the best People's Counsels in the whole country before she is through. We would like to have a person who really got out there and fought real hard for us.[1]

Of the five community-based groups that testified at the hearings, three were more negative than positive about her appointment, and two were more positive. Community groups who knew Mrs. Wagner personally supported her, those who did not know her were reluctant to support her. The Council confirmed her appointment almost unanimously.

Much of the mistrust evident in both the Connecticut and D.C. cases might have been alleviated or eliminated if officials making the appointment of the People's Counsels sought more citizen input on what person or what kind of person they wanted to serve as their advocate in proceedings on electricity rates. When the prospective People's Counsel is known to citizen groups, they offer their support, when the People's Counsel is not known, the People's Counsel becomes an "outsider" without trust and with little accountability. Time pressures and "crisis atmosphere" politics make a solicitation process difficult but can reduce friction and polarization between citizens and officials.

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[1] District of Columbia Public Service Commission, Committee of the Whole Hearing on Confirmation of Mayoral Nomination of the People's Counsel, 5 March 1975, Testimony of John Jones, pp. 11-14

Informal Relationships Between People's Counsels and Citizen Groups

Informal Relationships between People's Counsels and citizens groups where they have been established, have been the most effective means citizens have had for providing input into rate decisions. In four of the eleven states we examined, (Connecticut, New Jersey, New York, and D.C.) citizen groups had some unofficial connection with the People's Counsel. In each case this relationship greatly improved the communication and trust between citizens and officials.

In Connecticut, the People's Counsel attended law school with Marc Caplan, the head of the statewide citizen organization most active in the utility area:

> It so happens that the person was a classmate of mine at law school so I knew him. We have a very good relationship with him. I think by and large he is doing an excellent job. We have worked with him extensively on legislation and on rate hearings. The only complaint that we have about the People's Counsel is not him, but the institutional limits to what he can do.(Marc Caplan, Conn., 4/21/75)

In New Jersey the People's Counsel was the husband of a member of a citizen environmental group. A staff attorney in the Counsel's office was also a co-founder of an active statewide citizen group.

In New York, the Executive Director of the Consumer Protection Board worked with the New York Public Interest Research Group, a citizen group before being appointed to her present position. In the District of Columbia, the wife of a public interest group member served as a community liaison for the People's Counsel. The citizens groups in these states indicated their special relationships with the office of the People's Counsel lowered communication barriers and made it easier to deal with the office.

Good working relationships between citizens and officials also develop when the People's Counsel needs citizen group help, either to share information or for political support:

> He communicates with us because we have an interest in utility rates. He was very responsive to our ideas in the area of utilities and started developing his own. In the earlier stages our input was more welcome because he was new to the field and we were gathering research slightly faster than he was, sharing documents and legislation from other states. But then it got so that he was getting into his position and pretty much on his own. And our communications turned to just sort of conversations instead of input. (Louise Garfield, Conn., 4/21/75.)

In all instances where these good working relationships existed, however, we found that citizens attribute the trust to that particular person who served as People's Counsel. They are all concerned that the next People's Counsel might not be as responsive; according to Connecticut activist Marc Caplan.

> The People's Counsel has done ten times more than anyone expected him to do. We talk three or four times a week, on different issues, be it nuclear power, utility advertising, or a bill we were just working on -- not that we always agree, I should point out but we have a constant give and take. Again I would go back; this just happens to be an excellent person who was appointed and three or four years from now, there are no institutional guarantees that the leadership will be the same. (Marc Caplan, Conn., 4/21/75)

In summary, these informal relationships demonstrate how People's Counsels can gain the trust of citizen groups. This trust is crucial to meaningful public participation.

Citizen Participation vs. Citizen Representation

The point of view expressed by citizens is that they would prefer a People's Counsel who would help them present their own case, rather than someone who would present it for them. One People's Counsel we interviewed said:

> The Counsel himself must provide the accessibility to the people, so they can have their own direct input. I look upon us as an agency that is a catalyst.... It seems to me that rather than involving outselves in being the consumer spokesman we would rather have an interest in helping the people express their own views. (Edwin Palumbo, Rhode Island, 12/30/75)

The help citizens groups appreciated the most from People's Counsels was just that kind of help: helping strategize, providing information from the agencies, and helping to formulate questions in ways that the Public Service Commissioners would understand and consider seriously--in other words, help for citizens to present their own case.

This approach is similar to that taken by the Public Counsel within the Interstate Commerce Commission People's Counsels that we interviewed hold opinions that range from quite restrictive to fairly receptive on how directly citizens should participate in rate hearings. While all People's Counsels think citizens should be more involved, none believe that citizens groups, if left alone, could adequately represent themselves.

We asked several People's Counsels for their opinion of RUCAG (Residential Utility Consumer Action Group), a Ralph Nader inspired proposal to include with electricity bills a check off plan whereby rate payers could contribute to a consumer action group which would tackle utility rates. Through an election process, RUCAG would allow a significant amount of direct citizen participation. Rather than being a state office, a RUCAG group would be a private agency directed by rate payers. We also queried several counsels on whether or not they would favor providing funds to citizen group intervenors through reimbursement of attorney and expert fees. To both proposals the People's Counsels were opposed. The reason given most often was that the office of People's Counsel already performed the function of citizen representation better than could either of these more direct approaches.

Connecticut's Consumer Counsel, who has strong respect from citizen groups, believe that RUCAG regulation wouldn't work because there are not enough citizen activists to cover all issues:

> You would have to have a program for electric consumers, gas consumers, telephone consumers, people who are to deal with hospitals, nursing homes, prescription drugs, supermarkets--it just goes on and on. Everything the state is supposed to do. I think that you are getting away from the theory of government. The theory of government is that people get together to do those things they can't do individually. Government has an obligation to make sure the market price runs the way we want market prices to run. The job for government is to provide for people who can't provide for themselves. (David Silverstone, Conn., 11/17/75)

Other reasons People's Counsels expressed for opposing direct citizen regulation dealt with problems of how citizens would be represented, how consumer advocate "stars" would corner too much of available resources, how the problem of elections might turn into a popularity contest, and so forth -- the gamut of difficulties with the democratic process. People's Counsels felt that, given RUCAG or given a People's Counsel mechanism, they would choose the People's Counsel.

Citizen activists arguing for RUCAG have been opposing People's Counsels on the grounds that as long as a People's Counsel exists, the states would not create duplicative citizen representation mechanism.

As we discussed above, People's Counsels retain for themselves the authority over which cases they will enter and which they will not. Most People's Counsels argue that if an individual citizen or citizen organization does not agree with the policy of the People's Counsel, they are free to intervene on their own behalf. Connecticut and Montana have specific provisions in the legislation creating the office of People's Counsel that specifically allows any other citizen to intervene even if the People's Counsel has already done so.

In one state a controversy did in fact develop over whether the People's Counsel helped or hindered the intervention of a consumer organization in the state:

> When we applied to intervene in the Potomac Edison case, we filed our intervention late. It was a discretionary matter

on the part of the PSC as to whether or not we would be allowed into the hearings. They engaged in a maneuver to keep us from intervening. I say they, the PSC, and we believe very strongly that they were in conjunction with the PC and with the utility, Potomac Edison in this maneuver. I will tell you why.

We filed on Feb. 7 and they received our application on the tenth. In other words, the weekend had intervened. On the 11th I received notice that we would be permitted to come on Feb. 20 to argue why we should be allowed to intervene. We came in, they said if we could put on our case tomorrow or the following Monday, we'd be allowed to be intervenors otherwise we couldn't come in because it was too late. Had they allowed us in on a timely fashion on the 10th or 11th, when they received the intervention we would have had ample time to prepare a case to be ready on the 20th or 21st. They knew it, they knew it at the time they denied intervention. At the time, the PC took the position that they were not going to take a position on whether or not we should be allowed to intervene. They praised our organizational efforts and said it was a wonderful thing that we brought out 10,000 people in all these public meetings concerning the rate hike. They gave us a little credit for that, but they took the position that they weren't going to get involved in whether or not we ought to be allowed to intervene. In a subsequent letter that we received from PC he reminded us that he had wholeheartedly endorsed our intervention which just isn't true. It isn't true at all. Now, in denying our intervention, this is very, very important, the hearing examiner for the PSC suggested to the PC that he work with us and that he accept any legal brief that we might file as an attachment to his, to summarize the position of our organization concerning the rate increase.

So we went ahead and hired an attorney. We took that very seriously. The PC stood up in a public forum and said that he would welcome any input that we provided. So we went to the trouble and expense of putting together the brief. We had a deadline of March 19. On the 17th of March we communicated with the PC and told him our brief was ready. His only concern was that we get it to him before the 19th. Our lawyer told him that we would put it on a Trailways bus from Washington to Baltimore and if there was any problem whatsoever to be sure to notify us prior to the 19th because we wanted to make sure that our brief was included in his materials, for review by PSC. He assured us that he would do that. We received no communication

> whatsoever until the 20th. After the deadline we received a letter from the PC saying that he had decided on his own not to include the brief - not to attach it. But he had without authorization taken a piece of our brief, deleted any reference to the Organization for Consumer Justice and made it part of his brief. On his own volition, and not giving any credit, without asking permission to use a work product that we had paid money for . . well, we raised hell. We wrote a letter to the PSC just reminding the area examiner that we had made a deal, and that the PC willy-nilly on its own volition without consulting anybody, had made the decision to detach the brief. So we sent that brief in too, by itself directly to the PSAC and asked if they would consider it as part of their summary of the case and they told us that they would. (Dan Rupli, Md., 3/26/75)

The Maryland People's Counsel disagreed, and says that he supported the group's intervention:

> When the OCJ attempted to intervene, that group was supported by Mr. Rogers (the Department Assistant PC) and the public record shows that Mr. Rogers argued that the group should be permitted to intervene. It was the Commission and not our office that denied intervention because hearings had already started, and the petition was filed too late. Mr. Rogers' brief was due on March 19, 1975, after his brief was already written. More important, Mr. Rogers refused to submit the argument contained in the OCJ brief because OCJ was arguing for a higher rate of return than the office of People's Counsel. It should be noted that OCJ filed its brief anyway with the Commission.[1]

In a letter to OCJ's attorney, the People's Counsel did state his reason for not including the OCJ brief as part of his own; besides the OCJ rate was too high:

> The other arguments presented in your brief relate to the questions of the OCJ and added very little to the arguments on behalf of the people and were not included in the brief . .

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[1] Letter from Gary Alexander to Center for Science in the Public Interest, 9/3/75

> The central issue in this case is the Commissions' ability to find the lower possible increase to the consumers of Western Maryland. I believe it was important to address myself almost exclusively to that issue rather than cloud the document with references to the Commission's refusal to allow your intervention.[1]

The People's Counsel goes on to add his view of the proper role of the office of People's Counsel and of the role of consumer groups:

> I have been a strong advocate for the creation of an independent state consumer office to represent the public before state utility commissions. I have spoken, given interviews, or supplied information to consumer groups, public interest groups and legislative research groups all over the country.
>
> I believe that this system which has existed in Maryland since 1924 with easy access to the public and with a publicly reviewed budget, is far more preferable to private consumer groups soliciting money from the public to hire private attorneys without true public accountability and scrutiny of their budgets in the utility field where the costs are so great to put on a case.[2]

An important note to remember about citizen groups that intervene is that much of their action is directed at increasing the confidence of the group to take on issues themselves, to strengthen their sense of power to direct their own activities. One community leader describes the process:

> If you could get a group of citizens together to run their own program, I think it would be very effective. People are afraid to walk into a state house, even thought they have a right. They are afraid to call a legislator, afraid to write a letter. People don't know what their rights are. This is true. You would be amazed at professional people, at middle class people. We aleays assume that the person on the bottom level financially does know what his rights are. Well, he doesn't, but there are lots of middle class people who are never going to learn, because nobody tells them. That is where it's all at.

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[1] Letter from Donald Rogers to Vernon Zvoleff, 3/19/75

[2] Letter from Gary Alexander to Center for Science in the Public Interest, 9/3/75

> We have to help him to do it for himself. This is where consumer education comes in . We say, "Look, this is what we did." You know what we did - this is what we did. You can always call them. Get on the phone and talk to him. Some of them will say, "oh, I can't", never having made such a call. We say, "Yes, you can." And when it happens and they are able to get through, they have this feeling, the feeling is great. They're just thrilled. They'll say, "I did it." And we will say, "Yes, of course, you did it." And this strengthens a little bit each time. Until they get to fight. We could name people who come in here really almost hysterical, and they're down and out, and the landlord won't wait for the rent. They own some neighborhood dealer some money. The welfare check is late and all these things add up, and they get warrants. They are really frightened. It's understandable. We accept that, but usually their confidence begins to come back and they begin to feel they can fight. And if someone is fighting with you, it's much easier than if you are fighting alone. I sound like "pollyanna" but it's true. And gradually you begin to feel that you can help yourself. But the problems are numerous and never-ending. Here there are families that have one problem after another.(Community leader, R.I. 11/75)

We have found that People's Counsels, while they do improve the possibility of citizen participation in many cases, are insufficient responses to provide the degree of participation that active citizens desire. Many citizens interviewed approved of the notion of a People's Counsel but expressed reservations that the People's Counsel was established to "respresent" citizens. According to Ed Martine, staff attorney for a citizen group, Georgia Power Project:

> It is the whole question of what a People's Counsel is doing there in the first place. You are saying we need democratic input into rate decisions that are being made. So the state comes along and says, "OK, we'll give you a lawyer." (Ed Martin, GA., 8/75)

Thus citizen groups and People's Counsels apparently disagree on participation versus representation. The point of view expressed by citizens is that they would prefer a People's Counsel who would help them present their own case, not someone who would present it for them. The help citizen groups appreciate most is helping strategize, providing inside information from the agencies, help in formulating questions in ways that the Commissions would understand and consider seriously. In other words, help for citizens to participate themselves in rate hearings.

Rather than merely representing citizens' interests in utility hearings, People's Counsels could aid citizens to participate themselves directly. The experience with People's Counsels provides examples of innovative methods that foster direct citizen participation and which could be expanded in any state interested in improving direct citizen participation.

5. FINDINGS AND OPTIONS FOR IMPROVING PUBLIC PARTICIPATION

Utility rate hearings before state public service commissions are the primary formal route citizens can follow to influence utility rate policy. A series of legal and technical hurdles, however, makes the hearings difficult if not impossible to take part in; only the most well-organized and sophisticated citizen groups achieve meaningful participation. With active intervention limited to professional attorneys, engineers, accountants, economists and the like, the average citizen can rarely enjoy direct involvement. And even if a citizen could directly participate, the legal/technical procedures are too long, too complicated and too boring to sustain the layman's interest.

On traditional issues such as electricity pricing policy and accounting procedures, even the most well-equipped citizen groups lack sufficient technical resources. To intervene in a rate case, a group must present considerable expertise on the issues it raises. The utility industry has developed a roster of expert consultants who help companies plan future growth policies, new construction, economic justification for utility prices and so forth. Citizen groups have virtually no access to these experts, nor have they recourse to experts of their own. Consultants hired by public utility commissions or utilities are much too expensive for citizen groups to afford and are unfamiliar with issues of concern to such groups. (And sometimes they are ideologically opposed to the positions taken by the groups). Citizen groups are thus forced to seek technical assistance from what has been termed the "academic fringe," graduate students and experts outside their field, to prepare their expert testimony. This form of adhoc expertise has not matched the enduring expertise developed by the utilities.

On non-traditional concerns citizens have even more difficulty. Most issues that citizen organizations press for are not traditionally dealth with in rate hearings: energy conservation, innovative rate structures, consumer billing practices and so forth. Citizens are often interested in entering into the argument a discussion of values and non-quantifiable considerations. These as well as any form of emotional discussion whatsoever on the part of the citizens are often ruled irrelevant or out of order. Moreover, since utility electrical regulatory bodies and their procedures developed before recent economic alterations occured, especially inflation and the energy crisis, the agencies have difficulty dealing with citizen-raised concern over those alterations.

There is, however, some evidence of change within traditional utility-PUC patterns. Citizen action have broadened the scope of issues considered by utility commissions to include more problems relevant to present economic and technical conditions.

Information and access to expert testimony is almost a "union card" that provides the legal opportunity to take part in the decision-making process. Some citizen leaders, however, experess their belief that technical information is a luxury that is not critical in winning a case. Individuals who hold this view strongly were those whose main purpose was building community organizations. These organizers stress the need for more active and direct political activity by community residents as being the path to successful utility reform. They treat technical problems almost as details which can be worked out once basic political policy decisions are made. While these individuals downplay the importance of technical information, however, their groups had all utilized it in intervening in rate cases.

At the other end of the spectrum from community organizers, are the professionsls: lawyers, accountants and engineers who feel that the legal/technical aspects of the case are the most important, and that a legal proceedings is the quickest way to achieve the goals of the citizen groups. While the former community groups stress the need for more "power structure" information, professionals stress the need for technical material on economics, various rate structures, technical feasability on alternate forms of energy and so forth. Each type of citizen activist group thus seeks information that directly fits its own strategies.

People's Counsels contribute most importantly to public participation indirectly by providing legal and technical assistance. They relieve citizen groups of the task of presenting complicated legal analyses of utility rate increase requests. They provide the resources necessary to hire professional consultants who can more successfully challenge testimony presented by experts of the utility companies. They also develop their own expert analysis and testimony that would not be provided without their offices.

People's Counsels also serve a significant role in increasing public participation by acting as an inside contact within t he state bureaucracy. People's Counsels know who in the commissions favor which side of each question and have supplied their analysis to members of citizen groups. The People's Counsels also have a good feel for which strategies will be most influential in a rate case and have helped citizen groups plan their testimonies and tactics around these strategies.

The growing acceptance of the concept of People's Counsels is a significant indication that states are innovating to improve public involvement in setting utility policy. People's Counsels have, in fact, been a very effective mechanism for achieving a major citizen goal: keeping electric rates down for consumers. Without these officieals, the pressure from utility companies to raise rates would proceed virtually unchallenged. They provide the expertise and enduring institutional mechanisms necessary to support a case for more equitable and efficient rates. People's Counsels have also played a major role in writing, testifying and lobbying for consumer-oriented legislation on utilities.

In several ways, however, People's Counsels remain an unfulfilled promise; as they now operate they offer more the image than the reality of public participation. At least in a formal sense, People's Counsels are, by and large, unaccountable and often unresponsive to citizen groups. While in some cases they have aided citizen participation by serving as valuable contacts inside the policy process for citizen groups, or by developing effective public input procedures in other cases they have not supported citizen intervention, or have teken positions which conflict with those espoused by citizen groups.

People's Counsels have often restricted their activity to advocating lower rates on the grounds that on any other issue citizen groups cannot and will not agree. People's Counsels thus gloss over differences between citizen groups and lump all consumers into the class of those who want lower rates. On most utility issues citizen groups hold a wide range of opinion and disparate preferences for various policies. But within each issue citizen groups more often than not share a core of basic agreement. Thus we find that the interest of these groups is neither a simplistic mass-mentality nor a hopeless tangle of competing interest.

In none of the states we examined, do citizens have significant formal input into determining which issues and policies the Counsel would advocate. Because there is so little interaction between the People's Counsel and citizen groups, some conflict has arisen between the two groups over the public's role in setting priorities. In several cases, People's Counsels took positions that conflicted with those of the majority of citizen groups; in other cases they took positions that were substitutes for those advocated by citizen groups. In one case, a controversy developed over whether or not the People's Counsel had actively sought to prevent a state-wide citizen organization from participating in state hearings.

People's Counsels' lack of accountability is due in part to their officially assigned role. Statutes creating the offices provide little or no explicit definition of what form the relationship should take between citizens and their counsels. Only one state, New Jersey, defines the public interest, and there, in effect, it amounts to what the public advocate determines it to be. In short, vagueness in the statutes creating the People's Counsels has fostered the expectation among citizens that they will be represented, but have not created the opportunity for citizens to influence their counselors' actions.

With the law silent on who the public is, and how to determine what is in the public's best interest, political and budgeting constraints can easily produce official unresponsiveness. More often than not citizen groups challenge the status quo. With the complicated and interconnected networks established around utility companies, it is understandable that, at worst, political pressures might be used to remove or ameliorate citizen challenges. At best, People's Counsels would be wary of tackling new traditional issues and treading on the toes of established political groups.

Ideological differences are sometimes cited as reasons why People's Counsels do not take up innovative citizen issues. With the newness of the People's Counsels and with their very limited budgets, which are open to challenge by the office's executive and legislative sponsors, People's Counsels have limited freedom to respond to the goals of citizen organizations.

Communication is the key to effective citizen representation. Where People's Counsels have actively attempted to communicate with citizens they believe the official is acting in good faith. Where communications are poor between citizens and officials, officials are viewed with scepticism by citizen groups and remain outsiders without acceptance or trust. In sum, then, while People's Counsel have not been directly accountable to citizens, they have provided indirect support by aiding citizens with legal, technical aspects of utility cases.

More effective public participation would be achieved if People's Counsels would provide such services formally. The point of view expressed by citizens is that they would prefer a People's Counsel who would help them present their own case, not someone who would present it for them. The help citizen groups appreciated most was assistance in planning strategies, providing inside information from the agencies and help in formulating questions in ways that the PUC's would consider seriously. In other words, help for citizens to participate themselves in the rate hearings.

Rather than representing citizen's interests in utility hearings, People's Counsels could aid citizens to participate directly. The experience with People's Counsels provides examples of innovative methods that foster direct citizen participation and which could be expanded in any state interested in improving citizen participation.

Findings

1. Utility regulation has evolved into an extremely complex matter involving lawyers, engineers, accountants, economists and other professionals. The setting for each utility rate hearing is a labyrinthine legal-technical proceeding that goes far beyond the untutored layman's experience. This complexity and intricacy strongly inhibits active participation by citizens. Attorneys are the major actors in the policy making proceedings; technical experts supply the substance on which the decisions are made. Citizens are assigned the role of passive observers who must depend on others to decide what is in their best interest. (page 54)

2. Lack of citizen access to technical information hinders citizen participation. The volume of material is overwhelming (ironically due in part to citizen pressure for more comprehensive examination of social, economic and environmental factors); information is often confidential, out of date, or influenced by political considerations. (page 57)

3. Different types of public interest organizations use different types of information. Community organizers emphasize the need for political structure information and downplay the need for technical data and analysis; public interest lawyers place the emphasis the other way around. To be useful information has to be tailored to each user. (page 57)

4. The ability of citizen groups to tap expert assistance is almost non-existent. Citizens do not have adequate resources to meet the fee requirements set by consultants, typically $500 or more per day. And even when citizen groups manage to raise sufficient funds, there is a problem of finding a consultant group without bias. (page 60)

5. Virtually all citizen groups interviewed rely heavily on the People's Counsel to conduct a legal technical intervention. This is a major benefit of a People's Counsel office as seen by citizen groups. (page 64)

6. We find that few People's Counsels have developed formal mechanisms for providing information to citizen groups. Information on dates and places of public hearings, on technical questions and political issues is not systematically distributed by People's Counsels. For many People's Counsels the only information they supply is to answer consumer inquiries as best as they can with limited staff. (page 65)

7. While most citizen groups we interviewed welcome newsletters, workshops and other formal information tools, few have pressed to have them established. The groups are more interested in developing working relationships with decision makers and others "inside" the utilities or regulatory agencies whom the citizens could tap to help them be more effective in achieving their goals. For many groups the People's Counsel served this "insider" function. (page 65)

8. Many issues of concern to citizen intervenors are not traditionally dealt with in rate hearings: energy conservation, innovative rate structures, safety of nuclear power. Usually, these concerns are a response to what citizens perceive as externalities produced by utility activities. Since pollution, rate inequity and so forth are recent public issues, regulatory agencies with well-established procedures can respond only by a difficult change of outlook and method. This dynamic provides an intrinsic barrier to participation by citizens who attempt to influence utility rate policy in non-traditional areas. (page 70)

9. On any one utility issue citizens rarely all agree. Thus, defining the "public interest" is difficult. On issues we have examined, however, we find that the interests of voluntary civic groups are neither the extreme of a simple-minded mass mentality nor a hopeless tangle of competing and opposing interests. We find that within the range of opinions on any issue there can usually be found basic agreement on significant aspects of the question. (page 70)

10. When People's Counsels take on a rate case, they tend to gloss over differences among citizen groups. Citizens interviewed feel that the People's Counsel lumps them together into one undifferentiated mass. (page 73)

11. People's Counsels have been very effective, according to citizen leaders, in keeping electric rates low. (page 73)

12. Citizens groups sometimes conflict with People's Counsels over what is the public interest. At stake is whether the People's Counsel takes on issues that are considered important by the groups, advocates the consumer point of view strongly enough, is aware and knowledgeable about citizen concerns, has differing ideologies from those of citizen groups. (page 79)

13. People's Counsels are essentially free to rely on their own personal and political judgement when setting their priorities. (page 82)

14. The concept of a People's Counsel, as it is viewed in the eleven states that we examined, is that of introducing consumer input into utility rate hearings. Our examination indicates that the statutes creating the offices provide more the image than the reality of citizen

representation and participation. The law does not define explicitly the relationship between People's Counsels and citizens. This vagueness hinders public participation; by creating false expectations which erode the trust between citizens and officials. (page 83)

15. Citizen groups interviewed said that it was up to them to make contact with the People's Counsel. There were few procedures to solicit their views on setting the People's Counsel priorities. Reasons include absence of a clear statutory mandate to solicit citizen input, budget constraints, difficulty of soliciting citizen input, political influences, and appropriateness of lay citizen input into hearings. (page 83)

16. Except for the District of Columbia, and New York, no states have hearings, citizens counsels or other formal procedures for soliciting citizen suggestions and input on selection of the People's Counsel. (page 87)

17. When the prospective People's Counsel is known to citizen groups, they offer their support; when the People's Counsel is not known, the official becomes an "outsider" without trust and with little accountability. (page 91)

18. Informal relationships between People's Counsels and citizen groups, where they exist, have been the most effective means citizens have had for influencing positions taken by the People's Counsels. (page 92)

19. We have found that People's Counsels, while they do improve the opportunity for citizen participation in most cases, remain insufficient responses to provide the degree of participation active citizens desire. People's Counsels prefer to represent citizen views as the officials see them while citizens prefer to have the People's Counsel help consumers advocate their own point of view. (page 100)

Options for Improving Public Participation

Each of the following suggestions are options that states could adopt to improve citizen participation in utility rate proceedings. Most suggestions involve the use of the People's Counsel concept. Each option is addressed to a specific barrier to public participation discussed in section 4 of this report. For the most part, these methods are being used by People's Counsels in some states, but not all. Some methods, such as reimbursement of citizen intervenors and RUCAG, are only being considered. Where appropriate, we have proposed modifications to the method which could make it a more effective and responsive public participation mechanism.

TECHNICAL INFORMATION BARRIERS TO PUBLIC INFORMATION

1. Provide technical assistance for citizens wishing to testify in rate proceedings.

The Interstate Commerce Commission Public Counsel outreach attorneys alerted voluntary civic organizations to upcoming ICC hearings on rail reorganization plans and helped cities to understand the nature of the problems involved. This facilitated public testimony and comment.

People's Counsels could hire staff to act as outreach attorneys. These organizers would contact citizens, publicize public hearings and, in general, help citizens obtain technical assistance to provide input into rate proceedings.

2. Reimburse citizen intervenors.

Consumers Union intervened before the D.C. Public Service Commission in two utility rate increase cases, one involving the Washington Gas Light

Company and the other the Potomac Electric Power Company. Consumers Union petitioned the Commission to order the Potomac Electric Power Company to reimburse the group for their expenses, including reasonable attorney's fees. The request was denied by the Commission in February 1975 on the grounds that the Commission did not have the statutory authority to reimburse intervenors.

The U.S. Nuclear Regulatory Commission and the Federal Power Commission are considering this issue of citizen reimbursement. The Federal Trade Commission has already initiated the practice and legislation has been introduced in the Congress that would provide for citizen reimbursement.

Either Public Service Commissions could be given the authority to reimburse intervenors or the People's Counsel could be provided with extra funds for that purpose. People's Counsels work with citizens on utility issues and would be in a good position to decide when an important citizen concern was not being represented and which intervenor best presented that case.

3. Publish a citizen newsletter on utility issues.

The Washington, D.C. People's Counsel has published eleven issues of their "Utility Line." The Maryland office also writes a newsletter, "Utility Consumers Newsletter." Both are distributed widely to citizen groups interested in utility policy. A newsletter can be an effective way of explaining upcoming hearing information and technical aspects of the proceedings.

4. Issue regular and frequent press releases on the activities of the People's Counsel.

The New York Consumer Protection Board issues regular press releases on its activities and upcoming rate hearings.

5. Install a citizen toll-free telephone line.

The Rhode Island Consumer Council has utilized a wide area telephone service (WATS) line when federal officials visit the state. Virginia Knauer with HEW's Office of Consumer Affairs, for example, visited the Consumer Council office and answered questions for citizens who called in on the charge-free line. If citizens were provided with less costly and time-consuming ways of communicating their suggestions and ideas to public officials they would find it easier to participate in policy decisions.

People's Counsels could install a toll free line in their offices to encourage state residents to call and convey their concerns, ask for information or to file a complaint.

6. Improve access of People's Counsel to utility information.

Except for Missouri, all People's Counsels have access to the State Public Service Commission records. These records include all of the material submitted to the commissions by the utility companies. The Montana Consumer Counsel, however, is given the additional right to inspect and, if needed, subpoena utility company records. The Montana statute reads: "The Consumer Counsel may inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties along with the power to subpoena records or a witness."[1]

7. Hold pre-hearing meetings with citizens and utility officials.

The New Jersey Rate Counsel conducts informal pre-hearing meetings in which citizen intervenors and company representatives trade information informally.

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[1] 4 Montana Rev. Codes Annotated 70-707 (1975 Supp.)

DEFINING THE PUBLIC INTEREST

8. Limit the People's Counsel to representing the under-represented.

New Jersey legislation indicates that the ability of any public group to represent itself should be a factor in choosing which cases to enter:

> [The Public Advocate] shall consider in exercising his discretion the importance and the extend of the public interest involved and whether that interest would be adequately represented without the action of the department.[1]

9. Provide for the ability of the People's Counsel to represent diverse public interests.

New Jersey and Vermont retain outside attorneys to represent interests of diverse public groups. New Jersey legislation, for example provides that:

> If the Public Advocate determines that there are inconsistent public interests involved in a particular matter, he may choose to represent one such interest based on the considerations in this section, to represent no interest in that matter, or to represent one such interest through the Division of Public Interest Advocacy and another or others through other divisions of the department or through outside counsel engaged on a case basis.[2]

In Vermont, the Public Service Board hires an "attorney for the public" to represent citizens before the Public Service Commission. The Board may employ the same or different attorneys for different cases. These attorneys are provided funds to retain expert consultants. Public interest groups in the state have reacted favorably to this practice.

10. Conduct field hearings or workshops.

Field hearings have been held in New York and informal workshops have been held in the District of Columbia. These meetings can benefit both the People's Counsel who learns firsthand what consumers are concerned with and the public which has the opportunity to influence the direction of the People's Counsel office.

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[1] The Department of the Public Advocate Act of 1974, Assembly No. 1409, Chap. 27, Art. IV, Sect. 31 and 32.

[2] Ibid.

11. Public Service Commissioners should hold informal public hearings.

Public hearings can be held in large informal setting such as school auditoriums or churches. It is an opportunity for citizens to publicly express their views to Public Service Commissioners. Citizens have alleged, in Rhode Island for example, that these public hearings have been used to merely pacify angry consumers and that the Commissioners have not taken citizen complaints seriously. Nevertheless, public meetings of this sort can be productive to both Commissioners and to citizens.

ACCOUNTABILITY

12. Establishing a citizens' Consumer Council.

The Rhode Island Consumer Council was created to represent consumers in matters where the state sets rates or regulates the quality of service. The Council also develops and disseminates consumer information. The Governor, Lieutenant Governor and the Speaker of the House appoint seven citizens to the Council. Two of the seven are chosen from a list of candidates proposed by the state AFL-CIO. The Council selects an Executive Director and oversees his or her activities.

The number of citizens selected from prepared lists could be increased. Lists would be solicited from diverse voluntary citizen groups in the State. In Rhode Island, for example, citizen organizations such as the senior citizens of Rhode Island, the Coalition for Consumer Justice and the Consumer Protection Center could prepare lists of qualified, interested candidates.

13. Make the People's Counsel an elected official.

This option is adapted from RUCAG (Residential Utility Consumer

Action Group; see the appendix for a description of RUCAG). Each member of the RUCAG Board of Directors is elected by the residential consumers in their own districts. Once elected, the Board of Directors selects an Executive Director who is "subject at all times to the directions and supervision of the Board of Directors."

To be placed on the ballot, candidates for the Board are required to file a complete financial statement, a position paper on the issues, and a petition signed by a specified percentage of the residential utility consumer in the district.

People's Counsels could be appointed by a Board of Directors which is elected by utility consumers. Alternatively, the People's Counsel could be elected directly.

14. Hold confirmation hearings on the People's Counsel nominee.

The District of Columbia and the State of New York require that the People's Counsel be approved by the City Council (D.C.) or by the Senate (N.Y.). The confirmation hearings provide an opportunity for public officials and members of the public to meet the prospective People's Counsel and to testify on his or her qualifications and suitability for the post.

Such hearings should be well publicized and held in school auditoriums or churches in order to make the hearings more accessible to citizens.

15. Designate a staff member whose responsibility is to solicit citizen views on rate questions.

The Interstate Commerce Commission Public Counsel outreached program worked in local communities informing, organizing, and assisting citizens to testify in ICC public hearings on railroad reorganization. Once hearings were concluded the attorneys provided transcripts of citizen testimony to the Public Counsel analysis and review unit. They then summarized these testimonies for the U.S. Railroad Association to use in their planning studies.

People's Counsels could arrange staff responsibilities to provide this outreach function.

16. Conduct surveys of citizen concerns.

The Washington, D.C. People's Counsel mailed several thousand questionnaires were filled out and returned to the Counsel. The responses helped inform the People's Counsel on how customers viewed issues and which cases were most important.

6. APPENDICES

Residential Utility Consumer Action Groups (RUCAG)

RUCAG os a non-profit citizen corporation which would represent residential utility consumers before state regulatory legislative bodies and other public authorities. RUCAG would also be provided with the resources and responsibility to "conduct and support research investigation and public information activities in the utility area."[1]

RUCAG was first introduced by Ralph Nader in his syndicated column, "In the Public Interest," in the fall of 1975. Later that year, Connecticut congressman Toby Moffett discussed RUCAG on the floor of the House of Representatives. The following summer RUCAG gained more momentum and preliminary legislation was drafted. Since then a model piece of legislation has appeared in the Harvard Journal on Legislation, and various citizen groups are actively trying to persuade legislators to pass such a bill.[2]

Fourteen states and Washington, D.C. are in differing stages of legislative action on the bill.[3] The states are Arizona, California, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New York, Ohio, Oregon, Virginia and Washington, D.C.

RUCAG is similar to People's Counsel offices except for a basic difference: RUCAG is funded and directly accountable to its members. Consumers may contribute to RUCAG in three ways and each state can choose the system it prefers.

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[1] Robert B. Leflas & Martin H. Rogol, "Consumer Participation in the Regulation of Public Utilities: A Model Act", Harvard Journal on Legislation, 13 Feb. 1976, pp. 235-97

[2] Ibid., p. 252 [3] Ibid., p. 236

According to the first method, each month's utility bill would include a section where the consumer could check off a pre-designated amount of money for RUCAG. The consumer would then pay his utility bill and include the RUCAG donation.

In the second method the contributor pledges his contribution and is charged for the donation on next month's bill. The third method allows more than one number of the household to be a RUCAG member. These contributors would include their payments with the monthly bill.

In each case, the utility company would provide a list of the RUCAG members and the money contributed. RUCAG would cover all expenses incurred by the utility company.

RUCAG's Board of Directors are each elected to the office by the residential consumers in their districts.[1] In order to run for the Board, a perspective candidate is required to file a complete statement of all his financial resources and indicate "the nature of the candidate's employment, directorships and trusteeships held," and all transactions with utility companies.[2]

The candidates biographical sketch and written statement of opinion on issues would be sent to RUCAG members with one of the electric bills. To be placed on a ballot, the hopeful candidate must submit a petition which is signed by a certain percentage of voters in his/her District.[1]

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[1] Ibid., p. 244

[2] Ibid., p. 255

Board members work with the appointed Exectutive Director of RUCAG for three years. All Board meetings and membership gathering would be open and minutes would be published and available in public places.

RUCAG was designed to be independently funded and completely accessible to consumers. In the Harvard Journal on Legislation, Rogol and Leflar cite three reasons for RUCAG:

1. The absence of an institution possessing the necessary expertise to provide residential utility consumers with a voice in setting policies;
2. The inadequacy of funding for consumer advocates and People's Counsel offices;
3. The absence of mechanisms to hold consumer advocates accountable to their constituency.[2]

ICC Public Counsel

The ICC Public Counsel was established as part of the Rail Services Planning Office (RSPO). Under the Regional Rail Reorganization Act the RSPO Public Counsels inform and involve citizens in policy discussions concerning the reorganization of the Northeast and Midwestern railroads.[3] This office was to "employ and utilize the services which for whatever reasons, such as their size or location might not otherwise be adequately represented . . ."[1]

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[1] Ibid., p. 255

[2] Ibid., p. 256

[3] Regional Rail Reorganization Act of 1973 (P.L. 93-236), amended by P.L. 93-488, 26 Oct. 1974.

The office would conduct open hearings in communities where the abandonment of a rail line was the issue. These public hearings concentrated on obtaining citizen viewpoints on the preliminary system plan prepared by the United States Railway Association (USRA). In theory, the USRA would incorporate citizen comments, ideas, suggestions, etc. into the final system-plan to be submitted to Congress. Citizens would be informed of the hearings and assisted with the preparation of their testimonies with the help of "outreach" attorneys.

The ICC Public Counsel office consisted of a permanent staff in Wasington and fifteen to twenty attorneys would be recruited as needed on a contract basis. These lawyers had experience in public interest law firms, legal services programs or in congressional office work. The "outreach" attorneys contacted, informed and organized citizens to participate in Rail Services Planning Office hearings held in their assigned districts.

Each attorney had a particular area and he/she was responsible for gathering and disseminating information about these public proceedings. Each attorney had his/her own method of organizing the district. Ed Kuhlman describes how he went about discovering who were the interested members of the community and their views:

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[4] U.S. Congress, House of Representatives, Committee on Conference, Regional Rail Reorganization Act of 1973, p. 11

> We simply went and visited every shipper on every line. It took about three days to do a series of lines served by the Erie-Lackawanna which is one of the bankrupt railroads. We also contacted planning people who are very broad-based because they are interested in every economic aspect of the area. We would ask them to organize groups. (Ed Kuhlman, 8/29/75)

Cliff Curtis, another "outreach" attorney, used the ICC local office for coordinating efforts:

> I went up to Albany to the ICC office and got on their WATS line and just started calling local people, and people throughout the state, citizen groups, environmental groups. I contacted the League of Women Voters, lobbying groups, associated industries, Chambers of Commerce, mayors and regional planners. I covered the waterfront. Each phone call I made, I'd say, "Do you know of other people who are interested in railroad transportation issues?" (Cliff Curtis, 8/29/75)

In many ways the Public Counsel "outreach" program has had to overcome public skepticism and convince people that their input would be meaningful. Again and again, the attorneys began to realize how few people believed "they could make a difference", or knew how to go about influencing the governmental process.

Ed Kuhlman was a bit dismayed and surprized at the public's view of the Interstate Commerce Commission and the federal Government in general:

> The Interstate Commerce Commission is viewed as the authority establishment kind of group that certainly has no one's interests at heart except maybe the railroads. The ICC is viewed as an authority figure, certainly against anything these local people stood for. We would have to explain that we weren't spies fo the ICC and that we were there to assist them.

> I learned a great deal about the way people away from Washington view government. It was a fascinating thing to see how paranoid people are about government in Washington today - and terribly cynical.
>
> Essentially what er tried to show them was that if they could follow various processes, if they put forth some effort they could make a change. It wasn't all negative. (Ed Kuhlman, 8/26/75)

When the "outreach " attorneys were asked whether the Public Counsel was instrumental in improving citizen faith in the government, most responded as did John Schell:

> There's no doubt about it. The ICC has never had it so good. Very few Federal agencies ever have. People responded to government responding to them. It was not massive. It was impressive. (John Schell, 9/10/75)

Senator Vance Hartke (D/Ind.) expressed a similar opinion during a Senate Commerce Committee hearing:

> I think you should know that the Public Counsel has perhaps done more to improve the image of the Commission in the eyes of the public than any other recent Commission activity.[1]

It appears that after the initial introductions, the "outreach" attorneys were well received and trusted by local communities. Lettie Carson, a long-time activist in New York state and President of the Northeast Transportation Coalition, is an enthusiastic supporter of the "outreach" attorneys and the Public Counsel:

> They have been a tremendous help to the local communities, the citizens and the citizen groups, freight users and business heads . . . they have interpreted the law which is not easy for me or any other citizen to interpret . . . they have been very kind and helped people make effective presentations at hearings. (Lettie Carson, 8/28/74)

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[1] Hearing on Federal Branchline Policy, Senate, 17 July 1975, p. 183.

There is very little disagreement that the ICC Public Counsel was an effective solicitation mechanism which resulted in improved citizen-agency relations and increased direct citizen participation.

The Public Counsel process has received some criticism. Once the public testimonies were gathered, analyzed and summarized some of those interviewed felt that there was no assurance that the United States Railway Association would adhere to the public's sentiments on developing the final system plan.

> They didn't consider anything, they just went right on. USRA has based its plan on old time railroad thinking without any concern for the social or environmental impacts on the communities. (Lettie Carson, 8/28/75)

An economist who works with citizen groups felt that the Public Counsel solicits opinions from those people who they know will support the agencies' viewpoints. These "consumers" are usually landholders, local bankers and small businessmen. The general public has been misled according to the economist because the "outreach" attorneys were told to inform consumers on selected issues. As evidence, he points out that the attorneys dealt with basically the restoration of the branchlines, rather than with other issues which he considers more meaningful.

The economist, who declined to be identified. has some serious reservations on the education and solicitation process used by the Public Counsel:

> It's the process. It just can't be a passive one by its very nature. The way that they solicit opinions, the kind of technical expertise that they provide, the kind of materials hey provide, the basic background briefings that their lawyers were going to conduct the hearings on, all these things influence what actually happens in the process.

> Any such Public Counsel structure should be independent of an agency or state political apparatus and lawyers are not the right pople to be organizing in the field.

He thinks that lawyers tend to listen only to the most vocal elements of communities because they are unfamiliar with the substantial policy issues. However, he did comment that the attorneys working with the Public Counsel are "an awfully good bunch of people." He is not sure where the ICC Public Counsel model would apply, and whether it would be a more independent arrangement in another setting.

The existence of the Public Counsel is now in question. After five months President Ford has not nominated a Director for the Public Counsel office. Mr. Ford was originally willing to appoint William Kutzke, Assistant General for litigation at the Department of Transportation, but the Senate Commerce Committee had reservations.

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Environmental Action Foundation, *Power Line*, Washington, D.C.

Institute for Policy Studies, *The Elements*, Washington, D.C.

Procedure

The project has employed a coordinated use of interviews, questionnaires, public meetings and literature research. Thus, the sources for the present study consist of personal and telephone in-depth interviews with 49 citizen group leaders and state officials involved in utility rate decision making. Thirty-seven of these interviews were recorded and transcribed. Questions for these interviews (included in the appendix) were developed through a series of two meetings with public interest group representatives: one in Washington, D.C. and one in San Francisco, California. A meeting with the oversight committee (listed below) for the project also developed questions. Attending the public meetings were representatives from environmental, consumer, youth, minority, women and public interest law groups, as well as scholars interested in public policy-making involving technology.

Procedures for the meetings were designed with the assistance of Dr. Jennifer MacLeod, a member of the oversight committee who was formerly chief psychologist for Opinion Research Corporation, Inc. These meetings were unstructured discussions of barriers to public participation in technological decision-making. Interviews were, in a strict sense, unstructured as well. Interview questions were used more as a guide than as a rigid interview format. Several social science research texts were helpful in designing and analyzing the interviews, particularly those of Sjoberg and Nett[1] and Gordon.[2]

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[1] Gideon Sjoberg and Roger Nett, A Methodology for Social Research (New York: Harper & Row, Publishers, 1968)

[2] Raymond L. Gordon, Interviewing: Strategy, Techniques, and Tactics (Illinois: The Dorsey Press, 1975)

The nature of this study makes such an unstructured approach necessary. Project interviewers had to probe, directly and indirectly, the subjective attitudes of those interviewed to ferret out patterns of thought and action. Some attitudes undoubtedly had remained subconscious until the interviewer brought them out.

In conducting interviews, the project placed a special emphasis on three of the eleven states: Connecticut, New Jersey, and Rhode Island. With our limited resources this emphasis allowed us to examine the attitudes and problems of citizens and officials on a level that would be impossible with a broader approach. Problems with access to technical information and expertise were the specific focus of this in-depth examination.

Literature searches on public participation were conducted using periodical indices such as the Index to Legal Periodicals and reference material on this topic. Unfortunately, People's Counsels are relatively new offices and little has been published about them to date. Finally, information was assembled from the legislative histories of federal legislation dealing with the concept of People's Counsels, and similar programs such as the Interstate Commerce Commission's Public Counsel. Legislation and legislative histories, where they exist, were also assembled from states that have established offices of People's Counsel.

This report on citizen participation in utility regulation and People's Counsels represents a portion of a larger project dealing with public participation in technology assistance to citizen groups and for better access by the public to decision-making processes and to decision-makers themselves. The practical purpose of the research is to develop models for effective public participation programs that can be replicated at various geographic, economic, and political levels.

Oversight for the project was provided by the following Committee:

Ms. Madeline Adamson
Program Director
Movement for Economic Justice

Mr. Thomas Asher
Attorney-at-Law

Mr. Malcolm Baldwin
Senior Staff Member for NEPA Programs
Council on Environmental Quality
Executive Office of the President

Ms. Emilia Govan
Public Participation Staff
Office of Technology Assessment
U.S. Congress

Ms. Marcey Jaskulski
Environmental Committee
League of Women Voters of Greater Milwaukee

Dr. Suzanne Keller
Department of Sociology
Princeton University

Dr. Buford Macklin
Director of General Services
U.S. Department of Housing and Urban Development

Dr. Jennifer Macleod
Former Chief Psychologist at Opinion Research Corp.

Mr. Louis Roddis, President
John J. McMullen Co.

Interview Questions: People's Counsels

1. When did the office come into existence? What do you feel motivated the creation of the office?

2. Describe the People's Counsel selection process:
    - A. Is the Counsel appointed? By whom? For how long a term?
    - B. What attracted you to this position? Do you have experience with utility law or consumer protection projects?

3. What has been your budget for fiscal years 75, 76 and 77?
    - A. What are your sources for funding?
    - B. How independent is your office? Has funding posed any problems?
    - C. Are there sufficient funds to hire outside experts? If so, where and how do you find your experts?

4. How many people are on the staff?
    - A. What are their qualifications and expertise?
    - B. Do you feel the need for additional people? If so, for what positions?

5. What is your relationship to the Public Service Commission concerning:
    - A. Policy?
    - B. Use of Commission experts?
    - C. Use of other resources?

6. Do you have adequate access to information sources?
    - A. Are there any changes you would like to see in the statute concerning access to information?
    - B. Have you ever felt the need to study utility company records which have not been supplied through the Commission?

7. How do you decide which rate cases to enter as an intervener?

8. Do you interact with citizens? Describe issues on which you have cooperated with citizen groups.

9. Have you attempted to develop procedures for soliciting citizens' opinions such as advisory committres or citizen seminars? Do you think such procedures are necessary?

10. How do you include citizen viewpoints or arguments in your presentation before the Public Service Commission? Describe examples.

11. Is it the function of the People's Counsel to provide technical help, information, expertise, etc. to citizens? Describe examples of such help you have provided.

Questions for People's Counsel's (continued)

12. What types of inquiries do you receive from citizen groups?
    A. How do citizens utilize your office?
    B. Do citizens request information? If so, what kinds of information? Have citizens asked your office for technical assistance? If so, how were you able to help?

13. Does this office attempt to actively educate the public? Describe any newsletters, speaking engagements, community workshops which your office has developed.

14. Could your office represent consumers any differently if it were structured differently or accountable to persons other than state government officials?

15. What advantages and disadvantages do you see working within the State Government?

16. Have you heard of RUCAG? Do you approve or disapprove of the concept?

Interview Questions: Citizen Groups

1. Briefly describe your group's organization, purpose and membership composition.

2. What types of activities does your group become involved in?

3. How many and which rate cases has your group participated in? In how many of those cases did you work with the People's Counsel?

4. Would you briefly describe your relationship with the People's Counsel?
   - A. Who initiated the Contact?
   - B. How do you contact each other - by telephone, letters? How often?
   - C. Do you have a working relationship? Have you held any strategy planning sessions?

5. Did you feel that your input was desired and appreciated? Please give specific examples.
   - A. Can you give examples which would indicate to you that your group's ideas have been incorporated into the People's Counsel presentation?

6. Are you familiar with the People's Counsel's professional qualifications? Are they adequate?
   - A. What do you think would be the ideal skills and experience for a People's Counsel?

7. What ramifications do you see as a result of the way the People's Counsel is appointed?
   - A. To whom do you think the People's Counsel is accountable now?

8. What do you think your role is in relationship to the People's Counsel?

9. What would be your idea of a successful People's Counsel office? Please state your set of criteria.

10. Has the Public Counsel ever offered your group information or technical assistance?

Questions for Citizen Groups (continued)

11. What information have you received from the People's Counsel's office?
    - A. Description explaining the office and how citizens may utilize it?
    - B. Fact sheet explaining current issues.
    - C. Do you receive public notices of the Public Service Commission hearings? How far in advance?
    - D. Has the office supplied your organization with technical advice? What was his/her position and field?

12. Has the People's Counsel set up any particular method of formally soliciting consumer opinions such as citizen advisory committees, consumer workshops or newsletters?

13. Is the People's Counsel seeking additional money to broaden the field of intervenors - for instance, subsidizing lawyers' fees for citizen groups?

14. Did the People's Counsel ever prevent or discourage a citizen group from intervening? If so, please describe the circumstances.

15. What is your opinion of the People's Counsel's attitude toward the consumer, toward the utilities, toward the Public Service Commission?

16. What is your opinion of the Public Counsel's budget? Is it too much or too little? In your opinion, how well is the money being used?

17. What is your opinion of the People's Counsel's or Citizen Advocate's effectiveness in representing citizen viewpoints and involving citizens in the decision-making process?